

No. 14778

United States
Court of Appeals
for the Ninth Circuit

IDA MAE HERMANN, IRVING E. HERMANN,
ROBERT M. SMITH, M. B. SCOTT, HAR-
OLD SHEIN, H. C. RICHARDS, GEORGE
PATTERSON, LEONARD ROSEN, OR-
VILLE KELMAN and CAPTAIN G. D.
THOMPSON,

Appellants,

vs.

CIVIL AERONAUTICS BOARD, Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court for the Southern District of California, Central Division

Civil No. 18031-WM

In the Matter of the Petition of the CIVIL AERONAUTICS BOARD for an Order Requiring IDA MAE HERMANN, IRVING E. HERMANN, ROBERT M. SMITH, M. B. SCOTT, HAROLD SHEIN, H. C. RICHARDS, GEORGE PATTERSON, LEONARD ROSEN, ORVILLE KELMAN, and CAPTAIN G. D. THOMPSON, to Comply with Subpenas Issued by a Hearing Examiner of the Civil Aeronautics Board.

PETITION TO COMPEL THE ATTENDANCE AS WITNESSES OF CERTAIN PERSONS AND THE PRODUCTION OF DOCUMENTARY EVIDENCE BEFORE A HEARING EXAMINER OF THE CIVIL AERONAUTICS BOARD

To the United States District Court for the Southern District of California, Central Division:

The petitioner, the Civil Aeronautics Board, pursuant to the Civil Aeronautics Act of 1938, as amended (49 U.S.C. 401, et seq.), hereinafter referred to as the Act, by its attorneys, respectfully shows and alleges that:

1. This Court has jurisdiction of these proceedings pursuant to Section 1004 of the Act (49 U.S.C. 644).

2. The petitioner is the Federal regulatory agency charged with the responsibility of performing certain duties prescribed in the Act, including the institution of appropriate proceedings for the enforcement of the provisions of such Act.

3. The petitioner is empowered by Sections 205(a) and 1002(b) of the Act (49 U.S.C. 425(a), 642(b) to institute and conduct such investigations as it shall deem necessary to carry out the provisions of the Act and perform its powers and duties thereunder or which relate to the enforcement of any provisions of the Act. [1-A]

4. The petitioner is further empowered, by virtue of Sections 1004(b) and (c) of the Act (49 U.S.C. 644(b) and (c)), to issue and cause to be served upon any person a subpoena requiring the attendance and testimony of such person and the production of books, papers, and documents relating to any matter under investigation from any place in the United States at any designated place of hearing.

5. Section 1004(c) of the Act provides that the petitioner, in case of disobedience to a subpoena, may invoke the aid of any court of the United States in requiring the attendance and testimony of such witness and the production of such books, papers and documents.

6. Section 1004(d) of the Act provides that any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of

refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Board as a witness and produce books, papers, or documents. The enforcement proceeding hereinafter alleged constitutes an inquiry within the meaning of said Section of the Act, which proceeding is being carried on in the City of Los Angeles, County of Los Angeles, State of California, within the jurisdiction of this court.

7. On October 14, 1954, the Board instituted an enforcement proceeding entitled "In the Matter of Great Lakes Airlines, Inc., et al., Docket No. 6908." This proceeding involves a group of 20 respondents, namely, two air carriers, two individuals, a partnership engaged in the leasing of aircraft, a company organized for the purpose of providing gasoline and similar products, a company organized for purpose of acting as banking and fiscal agent, and 13 ticket agencies. The issues in the proceeding relate to violations of various provisions of the Act and requirements and regulations of the petitioner, including (1) the acquisition and maintenance of control of one or more of the respondent companies by certain of the other respondents in violation of Section 408 of the Act (49 U.S.C. 488), (2) engaging in unauthorized air transportation in violation of Section 401 of the Act (49 U.S.C. 481), (3) the conduct and holding out by irregular air carriers, individually and in combination, of frequent [2] and regular operations in excess of those permitted under the petitioner's exemption regulations, and (4) viola-

tions of the ticket and ticket agency regulations of the petitioner. A copy of the Petition for Enforcement and Complaint instituting such proceeding is attached hereto as Exhibit A and made a part hereof.

8. In the course of said proceeding, the Board, through its duly authorized representative, F. Merritt Ruhlen, Hearing Examiner, caused to be issued and served a number of subpoenas requiring the appearance as witnesses of certain persons and the production by them of documentary evidence before the said F. Merritt Ruhlen at Room 229 U. S. Post Office and Court House Building, Los Angeles, California, on specified days from March 9, 1955, to March 25, 1955. The persons to whom the subpoenas were directed are as follows:

(a) Ida Mae Hermann, individually and as Secretary-Treasurer of Great Lakes Airlines, Inc., as President of Air International, Inc., and as co-partner with Irving E. Hermann, d/b/a Nevada Aero Trades Company. Ida Mae Hermann and the three companies are all respondents in the said proceeding before the petitioner. This subpoena required the appearance and testimony of Ida Mae Hermann and the production by her of specified books, papers, and documents of the said companies. A true copy of such subpoena with the return of service endorsed thereon is attached hereto as Exhibit B and made a part hereof. Upon information and belief, Ida Mae Hermann was at the time of issuance and service of said subpoena, and is, a resi-

dent of the County of Los Angeles, California. Great Lakes Airlines, Inc. was at the time of the issuance and service of the said subpoena, and is, a corporation having an office and place of business at Lockheed Air Terminal, Burbank, California, within the jurisdiction of this Court. Upon information and belief, Air International, Inc., was at the time of the issuance and service of the said subpoena, and is, a corporation having an office and place of business at Lockheed Air Terminal, Burbank, California. Upon information and belief, Nevada Aero Trades Company, was at the time of the issuance and service of the said subpoena, and is now, a co-partnership having an office and [3] place of business at Lockheed Air Terminal, Burbank, California.

(b) Irving E. Hermann, individually and as President of Great Lakes Airlines Agency, Inc.— Both Irving E. Hermann and Great Lakes Airlines Agency, Inc., are respondents in the proceeding before the petitioner. The subpoena required the appearance and testimony of said Irving E. Hermann and the production by him of specified books, papers, and documents of said Great Lakes Agency, Inc. A true copy of such subpoena with the return of service endorsed thereon is attached hereto as Exhibit C and made a part hereof. Upon information and belief, Irving E. Hermann was at the time of issuance and service of said subpoena, and is, a resident of the County of Los Angeles, California. Upon information and belief, Great Lakes Airlines Agency, Inc., was at the time of the issuance and

service of the said subpoena, and is, a corporation having an office and place of business at Lockheed Air Terminal, Burbank, California, within the jurisdiction of this Court.

(c) Robert M. Smith, individually and as Executive Vice President of Currey Air Transport, Limited. Currey Air Transport, Limited is a respondent in the proceeding before the petitioner. The subpoena required the appearance and testimony of said Robert M. Smith and the production by him of specified books, papers, and documents of said Currey Air Transport, Limited, including income tax returns filed by said company and Robert M. Smith individually. A true copy of such subpoena with the return of service endorsed thereon is attached hereto as Exhibit D and made a part hereof. Upon information and belief, Robert M. Smith was at the time of the issuance and service of said subpoena, and is, a resident of the County of Los Angeles, California. Currey Air Transport, Limited was at the time of the issuance and service of the said subpoena, and is, a corporation having an office and place of business at Lockheed Air Terminal, Burbank, California, within the jurisdiction of this Court.

(d) M. B. Scott, President, M. B. Scott, Incorporated. Upon information and belief, M. B. Scott, Inc., is an advertising [4] agency which has from time to time performed advertising services in connection with the transportation activities of the respondents. The subpoena required the appearance and testimony of said M. B. Scott and the produc-

tion by him of specified documents relating to transactions with the respondents. A true copy of such subpoena, with the return of service endorsed thereon, is attached hereto as Exhibit E and made a part hereof. Upon information and belief, M. B. Scott was at the time of the issuance and service of said subpoena, and is a resident of the County of Los Angeles, California. Upon information and belief, M. B. Scott, Inc., was at the time of the issuance and service of the said subpoena, and is, a corporation having an office and place of business at West Hollywood, California.

(e) Harold Shein. Upon information and belief, Harold Shein is an auditor who has from time to time rendered auditing services for certain of the Skycoach Agency companies, respondents in the proceeding before the petitioner. The subpoena required Shein's appearance and testimony and the production by him of specified documents concerning such Skycoach Agency companies. A true copy of such subpoena, with the return of service endorsed thereon, is attached hereto as Exhibit F and made a part hereof. Upon information and belief, Harold Shein was at the time of the issuance and service of the said subpoena, and is, a resident of San Francisco, California.

(f) H. C. Richards. Upon information and belief, H. C. Richards is maintenance coordinator for Great Lakes Airlines, Inc. and Currey Air Transport, Limited, respondents in the proceeding before the petitioner. The subpoena required his appearance and testimony and the production by him of speci-

fied documents relating to the flight operations of such companies. A true copy of such subpoena, with the return of service endorsed thereon, is attached hereto as Exhibit G and made a part hereof. [5] Upon information and belief, H. C. Richards was at the time of the issuance and service of the said subpoena, and is, a resident of the County of Los Angeles, California.

(g) George Patterson. George Patterson is Vice-President of Great Lakes Airlines, Inc.; in charge of maintenance. Great Lakes Airlines, Inc. performs maintenance work for Currey Air Transport, Limited as well as for itself. The subpoena directed the appearance and testimony of said George Patterson and the production by him of specified documents relating to the aircraft of such companies. A true copy of such subpoena, with the return of service endorsed thereon, is attached hereto as Exhibit H and made a part hereof. Upon information and belief, George Patterson was at the time of the issuance and service of the said subpoena, and is, a resident of Los Angeles County, California.

(h) Leonard Rosen. Upon information and belief, Leonard Rosen is a banking and fiscal employee of one or more of the Skycoach respondents in the proceeding before the petitioner. The subpoena required his appearance and testimony and the production by him of certain specified bank and tax records. A true copy of such subpoena, with the return of service endorsed thereon, is attached hereto as Exhibit I and made a part hereof. Upon

information and belief, Leonard Rosen was at the time of the issuance and service of the said subpoena, and is, a resident of Los Angeles County, California.

(i) Orville Kelman, Brown-Kelman & Co. Orville Kelman is an auditor who has performed auditing services for one or more of the respondents in the proceeding before the petitioner. The subpoena required his appearance and testimony and the production by him of specified documents relating to such companies. A true copy of such subpoena, with the return of service endorsed thereon, is attached hereto as Exhibit K and made a part hereof. Upon information and belief, Orville Kelman was at the time of the [6] issuance and service of the said subpoena, and is, a resident of Los Angeles County, California.

(j) Captain G. D. Thompson. Captain Thompson is chief pilot for Great Lakes Airlines, Inc., and Currey Air Transport, Limited, respondents in the proceeding before the petitioner. The said subpoena required his appearance and testimony and the production by him of specified documents relating to assignments and meetings of flight personnel of such companies. A true copy of said subpoena, with the return of service endorsed thereon, is attached hereto as Exhibit L and made a part hereof. Upon information and belief, Captain Thompson was at the time of the issuance and service of the said subpoena, and is, a resident of the County of Los Angeles, California.

9. The testimony of the said persons and the books, papers, and documents required to be produced by said subpoenas were at the time of the issuance thereof, and are, relevant and material to the prosecution of the proceeding before the petitioner.

10. At the times of the return dates of the subpoenas and at the place aforesaid, to wit, Room 229, United States Post Office and Court House Building, Los Angeles, California, the said F. Merritt Ruhlen was present for the purpose of hearing the testimony of the said persons and receiving the production of the records required by said subpoenas but the said persons failed and neglected to appear before said officer.

11. Richard H. Keatinge, the attorney for the respondents in the proceeding, entered a special appearance for all of the aforesaid persons on whom subpoenas had been served and stated for the record that said subpoenas would not be honored by such persons unless ordered to do so by an appropriate order of this Court. The said Richard H. Keatinge also moved to quash the said subpoenas. [7]

12. The motion to quash the said subpoenas was referred to the petitioner. The petitioner, upon full consideration of the objections and argument presented by counsel, issued an order, No. E-9044, adopted March 25, 1955, denying said motion. A copy of said order is attached hereto as Exhibit M and made a part hereof.

13. Upon the issuance of said order, the Hear-

ing Examiner fixed March 29, 1955, as the new return date for said subpoenas. The said Hearing Examiner was present on that date to hear the testimony of said persons and receive the records required by the subpoenas but the said persons failed and neglected to appear. The said Richard H. Keatinge again stated that the subpoenas would not be obeyed unless the persons subpoenaed are compelled to do so by an order of this Court.

Wherefore, it is prayed that this Court issue its orders compelling each of the persons set forth in paragraph 8 hereof to appear before the aforesaid F. Merritt Ruhlen, Hearing Examiner, to give testimony, and to produce the records as required by the said subpoenas, at a time and place to be fixed in said order, in pain of being held in contumacy and contempt of this Court, and for such other and further relief as this Court may deem fit and proper in the premises.

LAUGHLIN E. WATERS,

United States Attorney

MAX F. DEUTZ,

Assistant U. S. Attorney

Chief of Civil Division

/s/ ANDREW J. WEISZ,

Assistant U. S. Attorney

/s/ ROBERT BURSTEIN,

Compliance Attorney, Civil Aeronautics Board,

Attorneys for Petitioner

[8]

Duly Verified.

[9]

EXHIBIT A

Before the Civil Aeronautics Board
Washington, D. C.

Docket No. 6908

In the Matter of GREAT LAKES AIRLINES,
INC.; et al., Enforcement Proceeding.

PETITION FOR ENFORCEMENT

In the opinion of the undersigned, Chief of the Office of Compliance, there are reasonable grounds to believe that certain provisions of the Civil Aeronautics Act of 1938, as amended, and requirements thereunder have been and are being violated by the above-named respondents as alleged in the attached complaint verified by George S. Lapham, Jr., a Compliance Attorney of the Board, and that formal investigation of the alleged violations by the Board is in the public interest.

Therefore, this petition for enforcement is docketed under the provisions of Rule 205 of the Rules of Practice in Economic Proceedings and an enforcement proceeding thereby is instituted so that the Board may determine whether any violations have been or are being committed as alleged in said complaint and whether the relief requested therein should be granted.

Answer to the complaint is required by Rule 207

Exhibit A—(Continued)

to be filed within fifteen (15) days after date of service of this petition.

/s/ ROBERT L. GRIFFITH,
Chief Office of Compliance

Docketed: October 14, 1954. [10]

[Title of Board and Cause.]

COMPLAINT

The undersigned Compliance Attorney makes this complaint against the above-captioned parties pursuant to the provisions of Rule 205 of the Rules of Practice in Economic Proceedings of the Civil Aeronautics Board (Board), and, on information and belief, based upon informal investigation by members of the Board's staff, alleges the following:

1. Great Lakes Airlines, Inc. (Great Lakes) was at all times mentioned in this complaint and is now a corporation organized and existing under the laws of the State of New York with its principal office and place of business at the Lockheed Air Terminal, Burbank, California, and was and is a citizen of the United States within the meaning of Section 1(13) of the Civil Aeronautics Act of 1938, as amended (the Act) [49 U.S.C.A. 401 (13)]. Great Lakes was at all times mentioned herein and now is registered with the Board as a large irregular carrier, holding Letter of Registration No. 810, issued to it by the Board on August 12, 1947, pursuant to the provisions of Part 291, formerly Section 292.1, of the

Exhibit A—(Continued)

Board's Economic [11] Regulations (Economic Regulations).

2. Currey Air Transport, Limited (Currey) was at all times mentioned in this complaint and is now a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business at the Oakland Municipal Airport, Oakland, California, and was and is a citizen of the United States within the meaning of Section 1(13) of the Act. Currey was at all times mentioned in this complaint and is now the holder of an individual exemption as an irregular transport carrier (Order No. E-5202, Docket No. 3951) issued by the Board on March 16, 1951.

3. Irving E. Hermann and Ida Mae Hermann were at all times mentioned in this complaint and now are residents of the State of California and citizens of the United States, and are engaging in business as co-partners d/b/a Nevada Aero Trades Company (Nevada Aero Trades) with their principal office and place of business at the Lockheed Air Terminal, Burbank, California.

4. Nevada Aero Trades is engaged in a phase of aeronautics within the meaning of Section 408 of the Act.

5. Air International, Inc. (Air International) was at all times mentioned in this complaint and now is a corporation organized and existing under the laws of the State of Nevada with its principal office and place of business at the Lockheed Air Terminal, Burbank, California.

Exhibit A—(Continued)

6. Air International is engaged in a phase of aeronautics within the meaning of Section 408 of the Act.

7. Great Lakes Airlines Agency, Inc. (Great Lakes Agency) is a corporation organized and existing under the laws of the State of Nevada with its principal office and place of business at Lockheed Air Terminal, Burbank, California.

8. Great Lakes Agency is engaged in a phase of aeronautics within the meaning of Section 408 of the Act.

9. All of the common stock of Great Lakes Agency was issued on December 12, 1951, in equal amounts to Irving E. Hermann and Ida Mae Hermann, [12] who were and are directors of the corporation and were and are respectively president and secretary-treasurer.

10. Nancy Heakin was and is vice president and a director of Great Lakes Agency and is the sister of Ida Mae Hermann.

11. The following entities were at all times mentioned in this complaint and are now corporations organized and existing under the laws of the State of Nevada with principal offices and places of business at the addresses indicated and each is a "ticket agent" within the meaning of Section 1(32) of the Act:

(a) Skycoach Agency of Nevada, Inc. (Skycoach of Nevada)—principal office and place of business at Lockheed Air Terminal, Burbank, California.

(b) Skycoach Airlines Agency of New York, Inc.

Exhibit A—(Continued)

(Skycoach of New York)—principal office and place of business at 702 Seventh Avenue, New York, New York.

(c) Skycoach Airlines Agency of Chicago, Inc. (Skycoach of Chicago)—principal place of business at 36 North Clark Street, Chicago, Illinois.

(d) Skycoach Agency of Los Angeles, Inc. (Skycoach of Los Angeles)—principal place of business at 37 Geary Street, San Francisco, California.

(e) Skycoach Airlines Agency of Newark, Inc. (Skycoach of Newark)—principal office and place of business at 100 Park Place, Newark, New Jersey.

(f) Super Skycoach Airlines Agency, Inc. (Super Skycoach)—principal office and place of business at Philadelphia International Airport, Philadelphia, Pennsylvania.

(g) Skycoach Airlines Agency of Boston, Inc. (Skycoach of Boston)—principal office and place of business at 93 Tremont Street, Boston, Massachusetts. [13]

(h) Skycoach Airlines Agency of Virginia, Inc. (Skycoach of Virginia)—principal office and place of business at Washington National Airport, Washington, D.C.

(i) Skycoach Airlines Agency of Milwaukee, Inc. (Skycoach of Milwaukee)—principal office and place of business at 114 West Wisconsin Avenue, Milwaukee, Wisconsin.

(j) Skycoach Airlines Agency of Detroit, Inc. (Skycoach of Detroit)—principal office and place

Exhibit A—(Continued)

of business at Penobscot Building, Front Street; Detroit, Michigan.

(k) **Skycoach Airlines Agency of Washington, Inc.** (Skycoach of Washington)—principal office and place of business at 715 Second Avenue, Seattle, Washington.

(l) **Skycoach Agency of San Francisco, Inc.** (Skycoach of San Francisco)—principal office and place of business at Oakland Municipal Airport, Oakland, California.

12. The Skycoach respondents set forth in paragraph 11 of this complaint are engaged in a phase of aeronautics within the meaning of Section 408 of the Act.

13. As an irregular transport carrier, Currey was at all times mentioned in this complaint and is now authorized to engage in irregular and infrequent interstate and overseas air transportation of persons and property and irregular and infrequent foreign air transportation of property only pursuant to an exemption from the certificate requirement of Section 401 of the Act issued pursuant to Section 416 of the Act and in accordance with the provisions of Part 291 of the Economic Regulations. This exemption is operative to the extent and only to the extent granted therein.

14. As a large irregular carrier, Great Lakes was at all times mentioned in this complaint and is now authorized to engage in irregular and infrequent interstate and overseas air transportation of persons and property and irregular and infrequent for-

Exhibit A—(Continued)

eign air transportation of property only pursuant to an exemption from the certificate requirement of Section 401 [14] of the Act issued pursuant to Section 416 of the Act and in accordance with the provisions of Part 291 of the Economic Regulations. This exemption is operative to the extent and only to the extent granted therein.

15. Since August 28, 1952, the operating authority of Great Lakes has been subject to a cease and desist order, Order No. E-6748, Docket No. 4161, issued by the Board wherein the latter ordered Great Lakes to cease and desist from operating regularly as specified in said order and to cease and desist from making or maintaining any agreement, or participating in any arrangement, with any ticket agent or other air carrier with respect to performing or holding out air transportation services in combination, conjunction or collaboration with such other carriers, where the collective air transportation service so agreed upon or the holding out thereof, would, if done by a single carrier, take it out of the classification of an irregular carrier.

16. Part 291 of the Economic Regulations expressly provides that an air carrier shall not be deemed to be an irregular air carrier unless the air transportation services offered and performed are of such infrequency as to preclude an implication of a uniform pattern or normal consistency of operation between or within designated points.

17. None of the carriers referred to in this complaint have been granted a certificate of public con-

Exhibit A—(Continued)

venience and necessity pursuant to Section 401(a) of the Act or any exemption from the requirements thereof or any other authority which would authorize them or any one or more of them to hold out or to perform air transportation services regularly or with a reasonable degree of regularity between or within designated points, except that the Board by Order No. E-5166 dated March 2, 1951, as extended by subsequent orders, granted to the carriers named herein and to all other large irregular carriers and irregular transport carriers an exemption authorizing them to engage in air transportation without regard to frequency and regularity between any two points when such flights are performed on the basis of plane-load capacity under contract with any department of the Military Establishment. Flights performed by the carriers under the [15] authority of this special exemption as reported in their quarterly flight reports filed with the Board pursuant to Section 242.5 of the Economic Regulations are not involved in this complaint and are excluded from any allegations hereinafter made.

18. Section 291.26(b) of the Economic Regulations provides as an express condition on the operating authority granted pursuant to Part 291 of the Economic Regulations and the letters of registration issued thereunder that no large irregular carrier shall make or maintain any agreement, or participate in any arrangement, with or involving any ticket agent or air carrier with respect to the holding out of air transportation services by such

Exhibit A—(Continued)

carrier individually or by such carrier in combination, conjunction or collaboration with another air carrier or carriers, where the collective air transportation service so agreed upon or arranged would, if conducted by a single carrier, take it out of the classification of an irregular air carrier as set forth in said Part 291. Order No. E-5166 mentioned in paragraph 17 of this complaint exempts these carriers and all other large irregular carriers and irregular transport carriers from the provisions of Section 291.26(b) of the Economic Regulations with regard to flights arranged through representatives at military installations for the transportation of uniformed military personnel traveling at their own expense to or from designated military bases. Flights reported by these carriers in their flight reports filed with the Board as performed under this exemption are not involved in this complaint and are excluded from any allegations hereinafter made.

19. Since on or about May 1, 1952, Great Lakes and Currey have made and maintained agreements; and participated in arrangements, between themselves and the other respondents named in this complaint through which said carriers have held out and have operated regular and frequent services in air transportation between designated points collectively and at various times individually by various methods and means including but not limited to those hereinafter described.

20. Irving E. Hermann and Ida Mae Hermann were prior to December 1, [16] 1951, and now are

Exhibit A—(Continued)

directors and the sole stockholders of Great Lakes and were and are respectively president and vice president.

21. Irving E. Hermann and Ida Mae Hermann prior to December 1, 1951, were and are, sole owners as co-partners of Nevada Aero Trades.
22. Since December 1, 1951, Nevada Aero Trades has owned C-46 aircraft N5616V.
23. Since on or about June 15, 1953, Nevada Aero Trades has owned DC4 aircraft N37472.
24. Since December 1, 1951, Ida Mae Hermann has owned all of the capital stock of Air International.
25. Since on or about May 11, 1952, Arthur R. Currey and Robert M. Smith have been president and executive vice president, respectively, of Currey and have held 51% and 49%, respectively, of the stock of Currey.
26. Mr. Robert M. Smith was employed by Great Lakes on or about July 1, 1949, and became assistant operations manager of Great Lakes on or about August 30, 1950. He held this position until on or about November 1, 1951, when he became general manager of Monarch Air Service (Monarch), a large irregular air carrier. He was general manager of Monarch until March or April of 1952, when he left Monarch to become the full-time executive vice president of Currey.

27. Mr. Arthur R. Currey has received no income from Currey subsequent to December 1, 1951.

28. Mr. Arthur R. Currey has not been author-

Exhibit A—(Continued)

ized to draw any checks on the Currey bank accounts subsequent to May 9, 1952.

29. On or about May 1, 1952, Currey leased C-46 aircraft N5616V from Nevada Aero Trades and on or about May 1, 1952, Currey leased C-46 aircraft N1628M from Two Eight Mike, Inc.

30. Mr. Robert M. Smith negotiated the aircraft lease agreements referred to in paragraph 29 of this complaint for Currey on or about May 1, 1952.

31. On or about November 14, 1952, Currey entered into ticket agency [17] agreements with each of the respondent ticket agencies set forth in paragraph 11 in this complaint.

32. Mr. Robert M. Smith negotiated all of the ticket agency agreements referred to in paragraph 31 entered into by Currey on or about November 14, 1952.

33. Since on or about December 1, 1951, Irving E. Hermann and Ida Mae Hermann have acquired and exercised control of the management and operations of Currey.

34. Since on or about December 1, 1951, Irving E. Hermann and Ida Mae Hermann have acquired and exercised control of the ownership of Currey.

35. The control of Currey referred to in paragraphs 33 and 34 of this complaint was acquired, and is continuing, through nominees or stock ownership, control of property, employees and equipment, leasing of aircraft, control of traffic solicitation and handling, financial management and control and agreements and arrangements of various types be-

Exhibit A—(Continued)

tween such carriers and the other respondent corporations, co-partnerships and individuals.

36. Since on or about October 1, 1952, the maintenance division of Great Lakes has performed maintenance for Great Lakes and "contract maintenance" for Currey.

37. Great Lakes and Currey purchase their gasoline from Air International.

38. Since December 12, 1951, Great Lakes Agency has existed as a holding company performing banking functions for Great Lakes and/or the other respondents named in this complaint.

39. Since on or about December 1, 1951, Great Lakes has been the lessee of ticket counter and office space at the Lockheed Air Terminal, Burbank, California.

40. Since on or about December 1, 1951, Great Lakes has been the lessee of ticket counter space at the Marine Terminal La Guardia Field, New York, New York.

41. Since on or about December 1, 1951, Great Lakes has been the lessee of ticket counter space at the Philadelphia International Airport, [18] Philadelphia, Pennsylvania.

42. Since on or about December 1, 1951, the counter space referred to in paragraphs 39, 40 and 41 of this complaint has been used by one or more of the Skycoach ticket agency respondents mentioned in paragraph 11 of this complaint.

43. Since December 1, 1951, Skycoach of Nevada, Skycoach of San Francisco and Skycoach of Los

Exhibit A—(Continued)

Angeles have performed and furnished for Great Lakes and Currey promotional advertising, sales, and other traffic generating services directly and through other ticket agents, and have handled passenger reservations for Currey and Great Lakes.

44. Since on or about June 27, 1952, Skycoach of Newark, Skycoach of Chicago, Skycoach of Boston, Skycoach of Virginia, Skycoach of New York, Skycoach of Detroit and Super Skycoach have performed and furnished for Currey and Great Lakes promotional advertising, sales, and other traffic generating services directly and through other ticket agents, and have handled passenger reservations for Currey and Great Lakes.

45. Since November 11, 1952, Skycoach of Washington and Skycoach of Milwaukee have performed and furnished for Currey and Great Lakes promotional advertising, sales, and other traffic generating services directly and through other ticket agents, and have handled passenger reservations for Currey and Great Lakes.

46. The various ticket agencies referred to in paragraphs 43, 44 and 45 above, at various times since December 1, 1951, have been and are owned or controlled by Irving E. Hermann and Ida Mae Hermann. Such control was acquired and is maintained through nominees or stock ownership, control of property and employees, financial management and control and contractual agreements and arrangements of various types between such ticket agencies and the other respondent corporations, and

Exhibit A—(Continued)

co-partnerships, owned or controlled by Irving E. Hermann and Ida Mae Hermann.

47. Frank A. Heakin has been and is president of all of the Skycoach corporations mentioned in paragraphs 11, 43, 44 and 45 of this complaint and is the brother of Ida Mae Hermann. [19]

48. Since December 1, 1951, substantially all of the advertising and other functions for the solicitation of traffic for Currey and Great Lakes have been conducted in and have been held out to the public in the name of "Skycoach" by the use of various phrases such as "Fly Skyeoach", "Always Fly Skycoach", "Always Fly the Skycoach Way" and "Super Skycoach".

49. Substantially all gate passes issued to passengers of Currey or Great Lakes during the periods mentioned in this complaint have had the word "Skycoach" conspicuously imprinted thereon.

50. Substantially all of the ticket forms used by Currey and Great Lakes have had imprinted in large type on the front cover "Always Fly Skycoach".

51. Substantially all flights of Currey and Great Lakes departing or arriving at the various airports served by them are and have been announced over public address systems and otherwise as "Skycoach" flights.

52. Since on or about July 1, 1953, aircraft N37472 has had "Super Coach" painted on the fuselage in large letters.

53. From on or about March 1, 1950, until on or

Exhibit A—(Continued)

about March 1, 1953, DC-4 aircraft N30070 had "Super Skycoach" painted on the fuselage and from on or about March 1, 1953, until on or about October 1, 1953, had "Super Coach" painted thereon.

54. The Skycoach corporations mentioned in paragraph 11 of this complaint provide and furnish for Currey and Great Lakes the accounting and bookkeeping functions, and certain ground services for handling passengers at various airports.

55. Since on or about December 1, 1951, Currey and Great Lakes in combination and at various times individually have held out to the public expressly and by a course of conduct that they operate flights of aircraft frequently and regularly between the following points:

(a) New York, New York on the one hand and Philadelphia, Pennsylvania, Chicago, Illinois, Kansas City, Missouri, and Los Angeles (Burbank), California on the other.

(b) Philadelphia, Pennsylvania on the one hand and Chicago, [20] Illinois, Kansas City, Missouri, and Los Angeles (Burbank), California on the other.

(c) Chicago, Illinois, on the one hand and Kansas City, Missouri, and Los Angeles (Burbank), California on the other.

(d) Kansas City, Missouri, on the one hand and Los Angeles (Burbank), California, on the other.

56. Since on or about December 1, 1951, Currey and Great Lakes have held out the services described in paragraph 55 above through the Sky-

Exhibit A—(Continued)

coach corporations mentioned in paragraph 11 of this complaint in the cities enumerated in that paragraph, and certain other ticket agencies used by those corporations (Skycoach corporations) for the purpose of generating traffic for transportation by Currey and Great Lakes including but not limited to Empire Aircoach Systems, New York, New York; Airline Reservations, Inc., New York, New York; Airline Reservations, Inc., Chicago, Illinois; and Airline Tickets, Inc., Los Angeles, California. Such holding out was and is accomplished by advertisements published in newspapers and broadcast by radio, distribution of advertising and business cards, time tables, pamphlets and circulars to the public and by oral representations to members of the public by the employees of the respondent carriers and ticket agencies and the employees of other ticket agencies referred to in this complaint.

57. Since on or about May 1, 1952, Currey and Great Lakes, in combination and at various times individually, have operated flights of aircraft in air transportation frequently and regularly between the points mentioned in paragraph 55 of this complaint. Such flights are shown by the quarterly flight reports which each of these air carriers individually is required to file with the Board by Section 242.5 of the Economic Regulations, and by the composite calendar analysis of those flight reports attached hereto and made a part hereof as an appendix.

58. By reason of the conduct alleged in this complaint, Currey and Great Lakes individually and

Exhibit A-(Continued)

collectively have violated Part 291 of the [21] Economic Regulations and Section 401(a) of the Act.

59. By reason of the conduct alleged in this complaint, Great Lakes has exceeded the limitations imposed upon its operating authority by Order No. E-6748, and thus has violated Section 1005(e) of the Act.

60. Section 291.23 of the Economic Regulations provides that the exemption accorded large irregular carriers does not extend to the carriage in air transportation of any passengers except those who were issued tickets of the carrier by the carrier or one of its regular employees in the form prescribed by Section 291.24 of the Economic Regulations at the time of sale.

61. Section 291.23 of the Economic Regulations further provides that the exemption accorded large irregular carriers does not extend to the carriage in air transportation of passengers furnished by a ticket agent unless the carrier has entered into a written agreement with the ticket agent for the furnishing of passengers and unless the ticket agent issued tickets of the carrier actually providing the transportation in the form prescribed by Section 291.24 of the Economic Regulations at the time of sale.

62. Section 291.24 of the Economic Regulations requires that the name and address of the large irregular carrier actually providing the air transportation be "printed" on its ticket and that the ticket provide appropriate spaces for and have

Exhibit A—(Continued)

entered thereon at the time of sale the name and permanent address of the passenger, the date of sale, the date of flight, origin and destination, and the fare actually paid by the passenger.

63. Section 291.26 of the Economic Regulations makes it an express condition on the operating authority of large irregular carriers that agreements between such carriers and their ticket agents providing for the solicitation and generation of passenger traffic to be transported by large irregular carriers be reduced to writing and signed by all the parties thereto.

64. Section 242.5(b)(4) [since February 5, 1953, designated as Section 242.5(a)(5)] of the Economic Regulations requires large irregular carriers to file with the Board true and complete copies of all agreements [22] with the ticket agents, together with the flight report required to be filed by all such carriers for each calendar quarter of each year.

65. Since on or about May 1, 1952, Currey and/or Great Lakes on numerous occasions have provided air transportation to persons who were not issued tickets of the respective carriers at the time of sale of such transportation to such persons by the named carriers or one of their ticket agents.

66. Since on or about May 1, 1952, Currey and/or Great Lakes on numerous occasions have provided air transportation to persons who held tickets which did not comply in form with the provisions of Section 291.24 of the Economic Regulations.

67. Since on or about May 1, 1952, Currey and/or

Exhibit A—(Continued)

Great Lakes on numerous occasions have provided air transportation to persons who purchased such transportation from ticket agents with whom the carriers had entered into no written agreement signed by all parties thereto relating to the generation of passenger traffic. Such ticket agents include but are not limited to Royal Air Coach, Boston, Massachusetts; Empire Aircoach Systems, New York, New York; and Air Way Travel, Los Angeles, California.

68. By reason of the conduct alleged in paragraph 65 of this complaint, Currey and/or Great Lakes have violated Section 291.23 of the Economic Regulations and Section 401(a) of the Act.

69. By reason of the conduct alleged in paragraph 66 of this complaint, Currey and/or Great Lakes have violated Section 291.24 of the Economic Regulations and Section 401(a) of the Act.

70. By reason of the conduct alleged in paragraph 67 of this complaint, Currey and/or Great Lakes have violated Section 242.5(b)(4) of the Economic Regulations and Section 401(a) of the Act.

71. Section 408 of the Act provides, in pertinent part, that it shall be unlawful, unless approved by the Board:

(a) For two or more air carriers, or for any air carrier and any person engaged in any other phase of aeronautics to consolidate or merge their properties, or [23] any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

Exhibit A—(Continued)

- (b) For any air carrier or person controlling an air carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;
- (c) For any person to continue to maintain any relationship established in violation of any of the provisions of said section.

72. By reason of the relationships entered into and maintained without prior Board approval as described in this complaint, Currey, Great Lakes, Irving E. Hermann and Ida Mae Hermann as individuals and as co-partners d/b/a Nevada Aero Trades, Air International, Great Lakes Agency and the Skycoach ticket agencies mentioned in paragraph 11 of this complaint have violated and are violating Section 408 of the Act.

73. Except to the extent that Currey and Great Lakes have been granted certain economic operating authority by the Board as set forth in paragraphs 1 and 2 of this complaint, none of the respondents has been granted any authority to engage in air transportation, and none of them, including Currey and Great Lakes, has been granted a certificate of public convenience and necessity or other authority authorizing them to engage in air transportation directly or indirectly, jointly or severally, on a regularly scheduled basis.

74. By reason of the conduct described in this complaint, Currey, Great Lakes, Irving E. Hermann and Ida Mae Hermann as individuals and as co-partners d/b/a Nevada Aero Trades, Air Inter-

Exhibit A—(Continued)

national, Great Lakes Agency and the Skycoach ticket agencies named in paragraph 11 of this complaint have jointly or severally engaged in air transportation between the points alleged in this complaint directly or indirectly without authority from the Board and thus have violated Section 401(a) of the Act. [24]

75. All of the violations committed by any and all of the respondents in this complaint jointly or severally constitute knowing and wilful violations of the Economic Regulations and the Civil Aeronautics Act.

76. The acts and conduct of the respondents described in this complaint were deliberately planned and executed for the purpose of evading and circumventing the applicable provisions of the Act, the Economic Regulations and the Board's order issued against Great Lakes, and for the purpose of concealing from the Board the true nature of the operations of all parties involved.

77. All of the respondents are continuing and will continue to violate the Act and the Economic Regulations as alleged in this complaint, and in addition Great Lakes is continuing and will continue to violate the cease and desist order outstanding against it as alleged in this complaint unless and until the relief hereinafter requested is granted.

Wherefore upon the basis of the knowing and wilful violations alleged above and the repeated and

Exhibit A—(Continued)

continuing nature thereof, the undersigned Compliance Attorney respectfully prays that the Board:

(1) Revoke the letter of registration held by Great Lakes Airlines, Inc.

(2) Revoke the individual exemption held by Currey Air Transport, Limited.

(3) Order Irving E. Hermann and Ida Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company, Air International, Inc., Great Lakes Airlines Agency, Inc. and all of the Skycoach ticket agencies set forth in paragraph 11 of this complaint to cease and desist from violating the provisions of Section 408 of the Civil Aeronautics Act.

(4) Order Great Lakes Airlines, Inc., Currey Air Transport, Limited, Irving E. Hermann and Ida [25] Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company Air International, Inc., Great Lakes Airlines Agency, Inc., and the Skycoach ticket agencies set forth in paragraph 11 of this complaint to cease and desist, jointly or severally, from engaging in air transportation directly or indirectly.

(5) Grant such other and further relief as the Board may deem proper.

GEORGE S. LAPHAM, Jr.
Compliance Attorney [26]

Washington, D. C., October 14, 1954.

CALENDAR ANALYSIS FOR YEAR 1952
 OF FLIGHTS OPERATED BY
 CURREY AIR TRANSPORT
 AND
 GREAT LAKES AIRLINES
 BETWEEN LOS ANGELES (BURBANK)
 AND
 NEW YORK

APPENDIX
 Page 1

LOS ANGELES (BURBANK) TO NEW YORK

	S	M	T	W	T	F	S
J	6	7	8	9	10	11	12
A	13	14	15	16	17	18	19
M	20	21	22	23	24	25	26
J	27	28	29	30	31	1	2
F	3	4	5	6	7	8	9
M	10	11	12	13	14	15	16
M	17	18	19	20	21	22	23
A	24	25	26	27	28	29	1
M	2	3	4	5	6	7	8
A	9	10	11	12	13	14	15
R	16	17	18	19	20	21	22
M	23	24	25	26	27	28	29
A	30	31	1	2	3	4	5
P	6	7	8	9	10	11	12
R	13	14	15	16	17	18	19
M	20	21	22	23	24	25	26
M	27	28	29	30	1	2	3
A	4	5	(6)	7	(8)	9	10
J	(11)	12	13	14	15	16	(17)
J	(16)	19	20	(21)	22	23	24
J	25	26	27	(28)	29	(30)	31
J	1	2	3	4	5	6	(7)
J	8	(9)	10	11	(12)	(13)	14
E	15	16	17	18	19	20	21
E	(22)	23	(24)	25	(26)	27	(28)
J	29	30	1	2	3	4	5
J	6	7	8	(9)	10	11	(12)
J	13	14	(15)	16	17	18	19
J	20	21	22	23	24	25	26
J	27	28	29	30	(31)	1	2
A	3	4	5	6	7	8	9
A	(10)	11	(12)	13	14	15	16
J	(17)	18	(19)	20	21	22	23
J	24	25	26	(27)	(28)	29	30
S	31	1	2	3	(4)	5	6
E	7	8	9	10	11	12	13
P	14	15	16	17	18	19	20
T	(21)	22	(23)	24	(25)	26	(27)
T	28	29	30	(1)	2	3	4
O	5	6	7	8	9	10	11
C	12	13	14	15	16	17	18
T	19	20	21	22	23	24	25
N	26	27	28	29	30	31	1
N	2	3	4	5	6	7	8
O	9	10	11	12	13	14	15
V	16	17	18	19	20	21	22
D	23	24	25	26	27	28	29
D	30	1	2	3	(4)	5	6
E	(7)	8	9	10	11	12	(13)
C	14	15	16	(17)	18	(19)	20
C	21	22	(23)	24	(25)	26	27
C	(28)	29	30	(31)			

NEW YORK TO LOS ANGELES (BURBANK)

	S	M	T	W	T	F	S
J	6	7	8	9	10	11	12
A	13	14	15	16	17	18	19
M	20	21	22	23	24	25	26
J	27	28	29	30	31	1	2
F	3	4	5	6	7	8	9
B	10	11	12	13	14	15	16
B	17	18	19	20	21	22	23
M	24	25	26	27	28	29	1
M	2	3	4	5	6	7	8
A	9	10	11	12	13	14	15
A	16	17	18	19	20	21	22
R	23	24	25	26	27	28	29
A	30	31	1	2	3	4	5
P	(6)	7	8	9	10	11	(12)
R	13	14	15	16	17	18	19
M	20	21	22	23	24	25	26
M	27	28	29	30	1	2	3
A	4	5	6	7	8	9	(10)
J	11	12	13	14	15	16	17
J	(18)	19	20	21	(22)	23	24
J	25	26	27	28	(29)	30	31
J	1	2	3	4	5	(6)	7
J	8	9	(10)	11	(12)	13	14
E	15	16	17	18	19	20	21
E	(22)	23	24	(25)	(26)	(27)	28
J	29	30	1	2	3	4	5
J	(6)	7	8	9	10	11	12
J	13	14	15	16	17	18	19
J	20	21	22	23	24	25	26
J	27	28	29	30	1	2	3
A	3	4	5	6	7	8	(9)
A	10	(11)	12	13	14	15	16
G	(17)	18	19	(20)	21	22	23
S	24	25	26	27	28	(29)	30
S	31	1	2	3	4	(5)	6
E	7	8	9	10	11	12	13
P	14	15	16	17	18	(19)	20
T	21	(22)	23	(24)	25	26	(27)
T	(28)	29	30	1	2	3	4
O	5	6	7	8	9	10	11
C	12	13	14	15	16	17	18
T	19	20	21	22	23	24	25
N	26	27	28	29	30	31	1
N	2	3	4	5	6	7	8
O	9	10	11	12	13	14	15
V	16	17	18	19	20	21	22
D	23	24	25	26	27	28	29
D	30	1	2	3	(4)	5	6
E	7	8	9	10	11	12	(13)
C	14	15	16	17	18	19	20
C	21	22	(23)	24	(25)	26	27
C	(28)	29	30	(31)			

LEGEND:

□ - indicates date on which flight departed; numeral at upper right indicates number of flights where more than one.

() - Currey Air Transport

() - Great Lakes Airlines

CALENDAR ANALYSIS FOR YEAR 1963
OF FLIGHTS OPERATED BY
CURREY AIR TRANSPORT
AND
GREAT LAKES AIRLINES
BETWEEN LOS ANGELES (BURBANK)
AND
NEW YORK

LOS ANGELES (BURBANK) TO NEW YORK

	S	M	T	W	T	F	S
J	4	5	6	7	8	9	10
A	11	12	13	14	15	16	17
M	18	19	20	21	22	23	24
J	25	26	(27)	28	29	30	31
F	1	2	3	4	5	6	
E	8	9	10	11	12	13	
M	16	17	(18)	19	20	21	
J	22	23	24	25	26	27	(X)
M	1	2	3	4	5	6	
A	8	(9)	10	11	12	13	14
R	15	16	17	18	19	20	21
J	22	23	24	25	26	27	28
A	29	30	31	1	2	3	4
P	5	6	7	8	9	10	11
R	12	13	14	15	16	17	(18)
J	19	20	21	22	23	24	25
M	(26)	27	28	29	30	1	2
A	3	4	5	6	7	8	(9)
M	10	11	12	13	14	15	16
J	17	18	19	20	21	22	23
J	24	25	26	27	28	29	30
U	31	1	2	3	(4)	5	6
N	7	8	(9)	10	11	12	13
E	14	15	16	17	(18)	19	20
J	(21)	22	23	24	25	26	27
J	28	29	(30)	1	2	3	4
J	5	6	7	8	9	10	11
L	12	13	14	15	16	17	18
J	19	20	(21)	22	23	(24)	25
J	26	27	28	29	30	31	1
A	2	3	4	5	6	7	(8)
U	9	10	11	12	(13)	14	15
G	16	17	18	(19)	20	(21)	(22)
S	23	24	(25)	26	(27)	28	29
S	30	(31)	1	(2)	3	4	(5)
E	6	7	(8)	9	10	(11)	12
P	13	14	15	(16)	17	18	(19)
T	20	(21)	22	(23)	24	25	26
T	27	28	(29)	30	1	2	3
O	4	(5)	6	7	8	9	10
C	11	12	(13)	14	15	16	(17)
T	18	19	20	(21)	22	23	24
H	25	26	27	28	29	30	31
N	1	2	3	4	5	6	7
O	8	9	10	11	12	13	14
V	15	16	17	(18)	19	20	21
D	(22)	23	(24)	25	(26)	27	(28)
D	29	(30)	1	(2)	3	4	5
E	6	7	(8)	9	10	11	(12)
C	13	14	15	16	17	18	19
C	20	21	(22)	23	24	25	(26)
C	27	(28)	29	(30)	31		

NEW YORK TO LOS ANGELES (BURBANK)

	S	M	T	W	T	F	S
J	4	5	6	7	8	9	10
A	11	12	13	14	15	16	17
M	18	19	20	21	22	23	24
J	25	(26)	27	28	29	30	31
F	1	2	3	4	5	6	7
E	8	9	10	11	12	13	14
B	15	16	17	18	19	20	21
B	(22)	23	24	25	26	27	28
M	1	2	3	4	5	6	7
A	8	9	10	11	12	13	14
R	15	16	17	18	19	20	21
A	22	23	24	25	26	27	28
P	29	30	31	1	2	3	4
R	5	6	7	8	9	10	11
J	12	13	14	15	16	17	18
J	19	20	21	22	23	24	25
J	26	27	28	29	30	31	1
J	28	29	30	31	1	2	3
J	5	6	7	8	9	10	11
L	12	13	14	15	16	17	18
J	19	20	21	22	23	24	25
J	26	27	28	29	30	31	1
A	4	5	6	7	8	9	10
U	11	12	13	14	15	16	17
G	18	19	20	21	22	23	24
S	(23)	24	25	26	27	28	29
S	30	(31)	1	(2)	3	(4)	(5)
E	6	7	(8)	9	10	11	12
P	13	14	15	(16)	17	18	19
T	20	21	22	(23)	24	25	(26)
T	27	28	(29)	30	1	2	3
O	4	5	6	7	8	9	10
C	11	12	13	14	15	16	17
T	18	19	20	(21)	22	23	24
H	25	26	27	28	29	30	31
N	1	2	3	4	5	6	7
O	8	9	10	11	12	13	14
V	15	16	17	(18)	19	20	21
D	22	23	24	25	26	27	28
D	(29)	30	1	2	3	4	(5)
E	6	7	(8)	9	10	11	12
C	13	14	15	16	17	18	19
C	20	21	(22)	23	24	25	(26)
C	27	(28)	29	(30)	31		

LEGEND:

() indicates date on which flight departed; number at upper right indicates number of flights where more than one.

Currey Air Transport

() Great Lakes Airlines

CALENDAR ANALYSIS FOR YEAR 1954
OF FLIGHTS OPERATED BY
CURREY AIR TRANSPORT
AND
GREAT LAKES AIRLINES
BETWEEN LOS ANGELES (BURBANK)
AND
NEW YORK.

APPENDIX
Page 3

LOS ANGELES (BURBANK) TO NEW YORK

	S	M	T	W	T	F	S
J	3	4	(5)	6	(7)	8	9
A	10	(11)	12	13	(14)	15	(16)
M	17	18	(19)	20	(21)	22	(23)
J	24	(25)	26	27	28	29	30
F	31	1	(2)	3	4	(5)	6
E	7	(8)	9	(10)	11	(12)	13
B	14	15	16	17	(18)	19	(20)
M	21	(22)	23	(24)	25	(26)	27
A	(28)	1	2	3	(4)	5	(6)
M	7	(8)	9	(10)	11	(12)	13
R	14	15	16	(17)	(18)	19	20
M	21	(22)	(23)	(24)	25	(26)	27
A	(28)	29	(30)	31	1	2	3
P	4	5	(6)	(7)	8	9	10
R	(11)	12	(13)	14	(15)	16	(17)
M	18	(19)	20	21	(22)	23	(24)
J	25	(26)	27	(28)	29	(30)	1
A	2	3	(4)	5	(6)	7	(8)
M	9	(10)	11	(12)	13	(14)	15
J	(16)	17	(18)	19	20	21	22
J	23	(24)	25	(26)	27	(28)	29
J	(30)	31	1	2	(3)	4	5
J	6	(7)	8	(9)	10	(11)	12
J	13	(14)	15	16	17	18	19
J	20	21	22	23	24	25	26
J	27	28	29	30	1	2	3
J	4	5	6	7	8	9	10
J	11	12	13	14	15	16	17
J	18	19	20	21	22	23	24
A	25	26	27	28	29	30	31
A	1	2	3	4	5	6	7
U	8	9	10	11	12	13	14
G	15	16	17	18	19	20	21
G	22	23	24	25	26	27	28
S	29	30	31	1	2	3	4
E	5	6	7	8	9	10	11
P	12	13	14	15	16	17	18
T	19	20	21	22	23	24	25
T	26	27	28	29	30	1	2
O	3	4	5	6	7	8	9
C	10	11	12	13	14	15	16
C	17	18	19	20	21	22	23
T	24	25	26	27	28	29	30
N	31	1	2	3	4	5	6
O	7	8	9	10	11	12	13
V	14	15	16	17	18	19	20
V	21	22	23	24	25	26	27
D	28	29	30	1	2	3	4
E	5	6	7	8	9	10	11
C	12	13	14	15	16	17	18
C	19	20	21	22	23	24	25
C	26	27	28	29	30	31	

NEW YORK TO LOS ANGELES (BURBANK)

	S	M	T	W	T	F	S
J	3	(4)	5	(6)	7	(8)	9
A	(10)	11	(12)	13	14	(15)	16
M	(17)	18	19	20	21	(22)	23
J	(24)	25	26	(27)	28	(29)	(30)
F	31	1	2	3	(4)	5	(6)
E	7	8	(9)	10	(11)	12	(13)
B	14	15	16	(17)	18	(19)	20
(21)	22	(23)	24	(25)	26	(27)	
M	(28)	1	2	(3)	4	(5)	6
A	(7)	8	(9)	10	(11)	12	(13)
R	14	(15)	16	17	18	(19)	20
(21)	22	(23)	24	(25)	26	(27)	
A	(28)	(29)	30	(31)	1	2	3
P	(4)	5	(6)	7	8	(9)	(10)
R	11	(12)	13	(14)	15	16	(17)
(18)	19	(20)	21	22	(23)	24	
M	(25)	26	(27)	28	(29)	30	1
A	(2)	3	4	(5)	6	7	8
M	9	10	(11)	12	(13)	14	(15)
J	(15)	16	17	18	19	20	(21)
J	(23)	24	(25)	26	27	28	(29)
J	30	31	1	(2)	3	(4)	5
J	13	14	15	16	17	18	19
J	20	21	22	23	24	25	26
J	27	28	29	30	1	2	3
J	4	5	6	7	8	9	10
L	11	12	13	14	15	16	17
Y	18	19	20	21	22	23	24
Y	25	26	27	28	29	30	31
A	1	2	3	4	5	6	7
U	8	9	10	11	12	13	14
G	15	16	17	18	19	20	21
G	22	23	24	25	26	27	28
S	29	30	31	1	2	3	4
E	5	6	7	8	9	10	11
P	12	13	14	15	16	17	18
T	19	20	21	22	23	24	25
T	26	27	28	29	30	1	2
O	3	4	5	6	7	8	9
C	10	11	12	13	14	15	16
C	17	18	19	20	21	22	23
T	24	25	26	27	28	29	30
N	31	1	2	3	4	5	6
O	7	8	9	10	11	12	13
V	14	15	16	17	18	19	20
V	21	22	23	24	25	26	27
D	28	29	30	1	2	3	4
E	5	6	7	8	9	10	11
C	12	13	14	15	16	17	18
C	19	20	21	22	23	24	25
C	26	27	28	29	30	31	

LEGEND:

() indicates date on which flight departed; numeral at upper right indicates number of flights where more than one.

Currey Air Transport



() Great Lakes Airlines

Duly Verified. [30]

Certificate of Service attached. [30-31]

EXHIBIT B

United States of America Civil Aeronautics Board

SUBPENA

To Ida Mae Hermann individually and as Secretary-Treasurer of Great Lakes Airlines, Inc., as President of Air International, Inc., and as co-partner with Irving E. Hermann d/b/a Nevada Aero Trades Company, Lockheed Air Terminal, Burbank, California.

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Building, 312 North Spring Street, in the city of Los Angeles, California, on the 15th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al., Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

(See attached sheets.)

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an of-

ficer designated by it, has hereunto set his hand at Washington, D. C., this 25th day of February, 1955.

/s/ F. MERRITT RUHLEN,

Hearing Examiner

[32]

Return of Service attached.

[33]

Attachment

For the years 1952 through February 25, 1955, inclusive, the following records and documents of Great Lakes Airlines, Inc., Air International, Inc., and Nevada Aero Trades Company, a co-partnership of Irving E. and Ida Mae Hermann:

- (a) All general ledgers and all subsidiary books and ledgers, and all vouchers, invoices, journals and other supporting documents to the entries in said books and ledgers.
- (b) All audit reports, financial statements (balance sheet, schedules of cash receipts and disbursements and profit and loss statements).
- (c) All minutes and notes of directors' meetings and stockholders' meetings, stock record books and all stock certificates.
- (d) All Bank statements and cancelled checks.
- (e) Copies of all income tax returns filed for the calendar or fiscal years 1951 through 1954, inclusive for the entities Great Lakes Airlines, Inc., Air International, Inc., and Nevada Aero Trades Company and for Ida Mae Hermann individually.
- (f) Specimens of all hand cards, brochures, schedules and other advertising material distributed to the public by Great Lakes Airlines, Inc. and/or its ticket agents.

(g) Specimens of each type of ticket and exchange order sold to the public during the years 1952 through 1954 inclusive by Great Lakes Airlines, Inc. and/or its ticket agents.

(h) Flight, auditor, and agent coupons taken from documents actually sold to the public by Great Lakes Airlines, Inc., and/or its ticket agents during the months of June and November for years 1952 through 1954 inclusive.

(i) Specimen copies of all newspaper, radio, telephone directory, and magazine advertisements subscribed for by or on behalf of Great Lakes Airlines, Inc.

(j) All correspondence, contracts, agreements and options between any of the following corporations, partnerships and individuals, and between any of them and any other entity acting for or on the behalf of any of them:

Great Lakes Airlines, Inc.

Currey Air Transport Limited.

Irving E. Hermann and Ida Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company.

Air International, Inc.

Great Lakes Airlines Agency, Inc.

Skycoach Agency of Nevada, Inc.

Skycoach Airlines Agency of New York, Inc.

Skycoach Airlines Agency of Chicago, Inc.

Skycoach Agency of Los Angeles, Inc.

Skycoach Airlines Agency of Newark, Inc.

Super Skycoach Airlines Agency, Inc.

Skycoach Airlines Agency of Boston, Inc.

Skycoach Airlines Agency of Virginia, Inc.

Skycoach Airlines Agency of Milwaukee, Inc.

Skycoach Airlines Agency of Detroit, Inc.

Skycoach Airlines Agency of Washington, Inc.

Skycoach Agency of San Francisco, Inc.

Arthur R. Currey.

Robert M. Smith.

Ida Mae Hermann.

Irving E. Hermann. [34]

(k) All individual personnel and payroll records and vouchers.

(l) All flight personnel assignment sheets, aircraft scheduling sheets, operations manuals, maintenance manuals, operations specification sheets for aircraft identification (Form ACA-518A), and pilot rosters for Great Lakes Airlines, Inc.

(m) All contracts, agreements, and memoranda relating to lease of office, ticket counter, and maintenance space and facilities.

(n) All bills of sale, chattel mortgages, certificates of registration and liens reflecting chain of title on aircraft owned and/or operated by Great Lakes Airlines Inc., and Nevada Aero Trades Company.

(o) Flight, auditor and agent coupons as follows:

(1) Flight of September 22, 1954 from New York to Burbank, California—A128420, A145455, A145-454, A142054, A142040, RT A17932, RT A12491, A145461, A141621, RT A13245, RT A13246, A146-005, A145456, A145457, A145458, A145459, A145-460, A145462.

(2) Flight of September 24, 1954, from New

York to Burbank, California—A145464, RT A13251 and RT A13250.

(3) Flight of December 2, 1953, from Burbank, California to New York—Z101029, Z101305, Z103-676, Z106402, Z106404, Z106411, Z106413, Z106414, Z106418, Z106419, Z106420, Z106421, Z106425, RT Z10720.

(4) Flight of December 9, 1953, from New York to Burbank, California—RT7676, RT7700, G342-132, G342133, G342135, RT 7674, RT 7669, RT7668, G342129, G342137, RT 7666, RT7675, RT. Z10720, RT 61346, RT56270 and RT 61370.

(5) Flight of December 11, 1953, from New York to Burbank, California—G341514, G341510, G341-541, G341507, G341509, G341508, RT7680, G341502, G341546, G341545, G341544, G332190, G341519, RT7681, G341503, G341550, Z104630, G341548, RT 7678, RT7683, G341504, G341505, RT7684, and G341540.

(6) Coupons Nos. RT56299 and Z105630. [35]

EXHIBIT C

United States of America Civil Aeronautics Board

SUBPENA

To Irving E. Hermann individually and as President of Great Lakes Airlines Agency Inc., Lockheed Air Terminal, Burbank, California.

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office

and Courthouse Building, 312 North Spring Street, in the city of Los Angeles, California, on the 15th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al. Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

(See attached sheets.)

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Washington; D. C., this 25th day of February, 1955.

/s/ F. MERRITT RUHLEN,
Hearing Examiner

[36]

Return of Service attached.

[37]

Attachment (1)

For the years 1952 through February 26, 1955, inclusive, the following records and documents of Great Lakes Airlines Agency, Inc.:

- (a) All general ledgers and all subsidiary books and ledgers, and all vouchers, journals, invoices, and other supporting documents to the entries in said books and ledgers.
- (b) All audit reports, financial statements (balance sheets, schedules of cash receipts and disbursements and profit and loss statements).
- (c) All minutes and notes of director's meetings

and stockholders meetings, stock record books and stock certificates.

- (d) All bank statements and cancelled checks.
- (e) Copies of all income tax returns filed for the calendar or fiscal years 1951 through 1954, inclusive for the corporate entity Great Lakes Airlines Agency, Inc. and for Irving E. Hermann individually.
- (f) Specimens of all hand cards, brochures, schedules and other advertising material distributed to the public by Great Lakes Airlines Agency, Inc., and/or its agents.
- (g) Specimens of each type of ticket and exchange order sold to the public during the years 1952 through 1954 inclusive by Great Lakes Airlines Agency, Inc. and/or its agents.
- (h) Flight, auditor, and agent coupons taken from documents actually sold to the public by Great Lakes Airlines Agency, Inc., and/or its agents during the months of June and November for years 1952 through 1954 inclusive.
- (i) Specimen copies of all newspaper, radio, telephone directory, and magazine advertisements subscribed for by or on behalf of Great Lakes Airlines Agency, Inc.
- (j) All correspondence, contracts, agreements and options between any of the following corporations, partnerships and individuals, and between any of them and any other entity acting for or on the behalf of any of them:

Great Lakes Airlines, Inc.

Currey Air Transport Limited.

Irving E. Hermann and Ida Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company.

Air International, Inc.

Great Lakes Airlines Agency, Inc.

Skycoach Agency of Nevada, Inc.

Skycoach Airlines Agency of New York, Inc.

Skycoach Airlines Agency of Chicago, Inc.

Skycoach Agency of Los Angeles, Inc.

Skycoach Airlines Agency of Newark, Inc.

Super Skycoach Airlines Agency, Inc.

Skycoach Airlines Agency of Boston, Inc.

Skycoach Airlines Agency of Virginia, Inc.

Skycoach Airlines Agency of Milwaukee, Inc.

Skycoach Airlines Agency of Detroit, Inc.

Skycoach Airlines Agency of Washington, Inc.

Skycoach Agency of San Francisco, Inc.

Arthur R. Currey, Robert M. Smith, Ida Mae Hermann, Irving E. Hermann. [38]

(k) All individual personnel and payroll records and vouchers.

(l) All contracts, agreements, and memoranda relating to lease of office, ticket counter, and maintenance space and facilities.

EXHIBIT D

United States of America Civil Aeronautics Board

SUBPENA

To Robert M. Smith individually and Robert M. Smith as Executive Vice President of Currey Air Transport Limited, Oakland Municipal Airport, Oakland, California.

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Building, 312 North Spring Street in the city of Los Angeles, California, on the 15th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al. Enforcement Proceeding Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

(See attached sheets.)

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Washington, D. C., this 25 day of February, 1955.

/s/ **F. MERRITT RUHLEN,**
Hearing Examiner

[40]

Return of Service attached.

[41]

Attachment

For the years 1952 through February 25, 1955, inclusive, the following records and documents of Currey Air Transport, Ltd.:

- (a) All general ledgers and all subsidiary books and ledgers, and all vouchers, journals, invoices, and other supporting documents to the entries in said books and ledgers.
- (b) All audit reports, financial statements (balance sheets, schedules of cash receipts and disbursements and profit and loss statements).
- (c) All minutes and notes of director's meetings and stockholders meetings, stock record books and stock certificates.
- (d) All bank statements and cancelled checks.
- (e) Copies of all income tax returns filed for the calendar or fiscal years 1951 through 1954, inclusive for the corporate entity Currey Air Transport Ltd. and for Robert M. Smith individually.
- (f) Specimens of all hand cards, brochures, schedules and other advertising material distributed to the public by Currey Air Transport Ltd. and/or its ticket agents.
- (g) Specimens of each type of ticket and exchange order sold to the public during the years 1952 through 1954 inclusive by Currey Air Transport Ltd. and/or its ticket agents.
- (h) Flight, auditor, and agent coupons taken from documents actually sold to the public by Currey Air Transport Ltd. and/or its ticket agents during the months of June and November for years 1952 through 1954 inclusive.

(i) Specimen copies of all newspaper, radio, telephone directory, and magazine advertisements subscribed for by or on behalf of Currey Air Transport, Ltd.

(j) All correspondence, contracts, agreements and options between any of the following corporations, partnerships and individuals, and between any of them and any other entity acting for or on the behalf of any of them:

Great Lakes Airlines, Inc.

Currey Air Transport, Limited.

Irving E. Hermann and Ida Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company.

Air International, Inc.

Great Lakes Airlines Agency, Inc.

Skycoach Agency of Nevada, Inc.

Skycoach Airlines Agency of New York, Inc.

Skycoach Airlines Agency of Chicago, Inc.

Skycoach Agency of Los Angeles, Inc.

Skycoach Airlines Agency of Newark, Inc.

Super Skycoach Airlines Agency, Inc.

Skycoach Airlines Agency of Boston, Inc.

Skycoach Airlines Agency of Virginia, Inc.

Skycoach Airlines Agency of Milwaukee, Inc.

Skycoach Airlines Agency of Detroit, Inc.

Skycoach Airlines Agency of Washington, Inc.

Skycoach Agency of San Francisco, Inc.

Arthur R. Currey, Robert M. Smith, Ida Mae Hermann, Irving E. Hermann. [42]

(k) All individual personnel and payroll records and vouchers.

(l) All flight personnel assignment sheets, aircraft scheduling sheets, operations manuals, maintenance manuals, operations specification sheets for aircraft identification (Form ACA-518A), and pilot rosters.

(m) All contracts, agreements, and memoranda relating to lease of office, ticket counter, and maintenance space and facilities.

(n) Flight, auditor and agent coupons as follows:

(1) Flight of December 10, 1953 from New York to Burbank, California—M45672, M45671, M45673, M45670, M45646, M45653, RT56433, M45651, M45682, M45677, M45644, M45678, RT56347, M45647, M45650, M45656, RT56429, RT56349, RT56342, RT56341, RT56343, M45657, RT56428, RT56434, M45658, M45648, M45655, M45679, M45680, M45681, RT56430, M45652.

(2) Flight of November 11, 1953 from Burbank, California, to New York, New York—Z100549, Z100552, Z101006, Z103265, Z103268, Z103269, Z103271, Z103274, and Z103276.

(3) Flight of September 29, 1953 from Chicago, Illinois, to Burbank, California—RT Z10256, RT-50393, RT60004, SP71587, M38862, M38861, M38860, M38857, M39003, M39004, M39005, M39006, M39007, M39008, M39009, M39010, M39011, M39012, M39014, M39039, M39040, M39041, M39042, M39043, M39044, M39045, M39047, M39048, M39049, M39050, M38853, M38854, M38855, M38856, M38858, M38859, and M38863.

(4) Coupons Nos. RT56299 and Z105630. [43]

EXHIBIT E

United States of America Civil Aeronautics Board

SUBPENA

To Mr. M. B. Scott, President M. B. Scott, Incorporated, 9155 Sunset Boulevard, West Hollywood 46, California.

At the instance of the George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Building, 312 North Spring Street, in the city of Los Angeles, California, on the 9th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al. Enforcement Proceeding, Docket No. 690.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

(See attached sheet.)

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Washington, D. C., this 21st day of February, 1955.

/s/ **F. MERRITT RUHLEN,**

Hearing Examiner

[44]

Return of Service attached.

[45]

Attachment

All correspondence (letters, telegrams, notes and memoranda) between M. B. Scott, Inc. and any of the following entities:

Great Lakes Airlines, Inc.

Currey Air Transport, Limited.

Irving E. Hermann and Ida Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company.

Air International, Inc.

Great Lakes Airlines Agency, Inc.

Skycoach Airlines Agency of New York, Inc.

Skycoach Airlines Agency of Chicago, Inc.

Skycoach Agency of Los Angeles, Inc.

Skycoach Airlines Agency of Newark, Inc.

Super Skycoach Airlines Agency, Inc.

Skycoach Airlines Agency of Boston, Inc.

Skycoach Airlines Agency of Virginia, Inc.

Skycoach Airlines Agency of Milwaukee, Inc.

Skycoach Airlines Agency of Detroit, Inc.

Skycoach Airlines Agency of Washington, Inc.

Skycoach Agency of San Francisco, Inc.

All correspondence, invoices, statements and insertion orders in which the aforesaid entities are mentioned.

All ledger sheets in your possession which contain information regarding transactions with any of the aforesaid entities.

Copies of all insertion orders for radio or television advertising, and orders for the printing of brochures and other advertising material placed

with M. B. Scott, Inc., by any of the aforesaid entities. [46]

EXHIBIT F**United States of America Civil Aeronautics Board****SUBPENA**

To Mr. Harold Shein, c/o Shein & Honig, Room 912, 821 Market St., San Francisco, Calif.

At the instance of George S. Lapham, Jr. Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Building, 312 North Spring St., Los Angeles, California, in the city of Los Angeles, California on the 9th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al., Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

For the years 1952 through February 21, 1955, inclusive, the following records and documents of Skycoach Agency of San Francisco and any other entities using the style Skycoach:

(a) Copies of all quarterly recapitulations of payrolls and payroll tax sheets together with any notes or memoranda indicating to whom such copies were provided.

(b) All copies of weekly recapitulations of receipts or disbursements sheets with notes or memor-

anda indicating to whom such copies were provided.

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Washington, D. C., this 21st day of February, 1955.

/s/ **F. MERRITT RUHLEN,**

Hearing Examiner

[47]

Return of Service attached.

[48]

EXHIBIT G

United States of America Civil Aeronautics Board

SUBPENA

To Mr. H. C. Richards, Lockheed Air Terminal,
Burbank, California.

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Building, 312 North Spring Street in the city of Los Angeles, California, on the 10th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al. Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

All aircraft routing sheets, aircraft assignment

sheets, and ship distribution charts prepared and/or used for Great Lakes Airlines, Inc. and Currey Air Transport Ltd., since May 1, 1952.

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Washington, D. C., this 1st day of March, 1955.

/s/ **F. MERRITT RUHLEN,**

Hearing Examiner

[49]

Return of Service attached.

[50]

EXHIBIT H

United States of America Civil Aeronautics Board

SUBPENA

To Mr. George Patterson, Lockheed Air Terminal,
Burbank, California:

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Bldg., 312 North Spring Street, in the city of Los Angeles, California, on the 14th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al. Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you

and produce at said time and place the following books, papers, documents, and records:

For the period of May 17, 1952 to March 9, 1955, inclusive:

- (1) All aircraft maintenance logs for owned and/or operated by Currey Air Transport, Ltd., and Great Lakes Airlines, Inc.
- (2) All aircraft identification sheets (Form ACA 518A) prepared by and/or for Currey Air Transport, Ltd., and Great Lakes Airlines, Inc.
- (3) All aircraft utilization sheets prepared by and/or for Currey Air Transport, Ltd., and Great Lakes Airlines, Inc.
- (4) All aircraft lease agreements and correspondence and memoranda relating to such agreements for aircraft operated by Currey Air Transport, Ltd., and Great Lakes Airlines, Inc.

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Los Angeles, California, this 9th day of March, 1955.

/s/ **F. MERRITT RUHLEN,**
Hearing Examiner

[53]

Return of Service attached.

[54]

EXHIBIT I

United States of America Civil Aeronautics Board

SUBPENA

To Mr. Leonard Rosen, 18015 Keswick Street, Reseda, California.

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Building, 312 North Spring Street in the city of Los Angeles, California, on the 14th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al. Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

All bank statements, bank books, deposit slips and cancelled checks for any personal bank accounts (savings or checking) for the years 1952 through 1954 inclusive. All employee copies of "Withholding Tax Statements (Treasury Department Form W-2), and copies of all Federal Income Tax Returns filed by you for the calendar or fiscal years 1952 through 1954 inclusive.

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an of-

ficer designated by it, has hereunto set his hand at Washington, D. C., this 2nd day of March, 1955.

/s/ F. MERRITT RUHLEN,
Hearing Examiner

[55]

Return of Service attached.

[56]

EXHIBIT K

United States of America Civil Aeronautics Board

SUBPENA

To Mr. Orville Kelman, Brown-Kelman & Company, 8907 Wilshire Boulevard, Los Angeles, California.

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Building, 312 North Spring Street, in the city of Los Angeles, California, on the 9th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al., Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

All correspondence, contracts, agreements, memoranda, work papers and audit reports relating to the entities listed on the attached sheet since May 1, 1952.

[Attached Sheet]

Great Lakes Airlines, Inc.
Currey Air Transport, Limited.
Irving E. Hermann and Ida Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company.
Air International, Inc.
Great Lakes Airlines Agency, Inc.
Skycoach Agency of Nevada, Inc.
Skycoach Airlines Agency of New York, Inc.
Skycoach Airlines Agency of Chicago, Inc.
Skycoach Agency of Los Angeles, Inc.
Skycoach Airlines Agency of Newark, Inc.
Super Skycoach Airlines Agency, Inc.
Skycoach Airlines Agency of Boston, Inc.
Skycoach Airlines Agency of Virginia, Inc.
Skycoach Airlines Agency of Milwaukee, Inc.
Skycoach Airlines Agency of Detroit, Inc.
Skycoach Airlines Agency of Washington, Inc.
Skycoach Agency of San Francisco, Inc. [59]

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Washington, D. C., this 21st day of February, 1955.

/s/ F. MERRITT RUHLEN,

Hearing Examiner

[57]

Return of Service attached.

[58]

EXHIBIT L**United States of America Civil Aeronautics Board****SUBPENA****To Captain G. D. Thompson, Lockheed Air Terminal, Burbank, California.**

At the instance of George S. Lapham, Jr., Compliance Attorney, you are hereby required to appear before Honorable F. Merritt Ruhlen of the Civil Aeronautics Board, at Room 229, U. S. Post Office and Courthouse Bldg., 312 North Spring Street, in the city of Los Angeles, California, on the 25th day of March, 1955, at 10:00 o'clock a.m. of that day, to testify in the Matter of Great Lakes Airlines, Inc., et al., Enforcement Proceeding, Docket No. 6908.

And you are hereby required to bring with you and produce at said time and place the following books, papers, documents, and records:

All flight personnel assignment sheets or charts and minutes of all pilot meetings pertaining to Currey Air Transport Ltd. and Great Lakes Airlines, Inc. since May 1, 1952.

Fail not at your peril.

In Testimony Whereof, the undersigned, a member of the said Civil Aeronautics Board, or an officer designated by it, has hereunto set his hand at Washington, D. C., this 1st day of March, 1955.

/s/ **F. MERRITT RUHLEN,**
Hearing Examiner

[60]

Return of Service attached.

EXHIBIT M

United States of America Civil Aeronautics Board
Washington, D. C.—Order No. E-9044

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 25th day of March, 1955.

Docket No. 6908

In the Matter of Great Lakes Airlines, Inc., et al., Enforcement Proceeding.

ORDER ON MOTIONS TO QUASH REFERRED TO THE BOARD

Pursuant to Rule 18(e) of the Board's Rules of Practice in Economic Proceedings (14 CFR 302.18 (e)), the Examiner assigned to this proceeding has referred to the Board for its consideration certain subpoenas duces tecum issued by him at the instance of the compliance attorney, and verbal and other motions to quash the subpoenas heretofore denied by the Examiner. The proceeding, in which hearings are now in progress before the Examiner, involves charges by the Office of Compliance of violations on the part of respondents of various provisions of the Civil Aeronautics Act and Board regulations thereunder. In general, unlawful control relationships are alleged to exist between certain of the respondents; the activities of the agency and individual respondents are said to be such as to constitute the holding out and performing of air transportation activities requiring authority from the Board; the air carrier respondents (Great

Lakes and Currey) are charged with conducting operations both individually and collectively [61] pursuant to unlawful arrangements which exceed those permitted by their air carrier operating authority from the Board, and also with failing to comply with ticketing and reporting requirements.

The subpoenas are directed to the fourteen persons named in the margin,¹ and order either the

¹ Persons subpoenaed and date of issuance of subpoena:

Mr. Patrick Doyle, Skycoach Airlines Agency of New York, Inc., 702 7th Avenue, New York, New York—Jan. 18, 1955.

Mr. Howard Gensel, Super Skycoach Airlines Agency, Inc., Philadelphia International Airport, Philadelphia, Pa.—Jan. 20, 1955.

Mr. Orville Kelman, Brown-Kelman & Company, 8707 Wilshire Boulevard, Los Angeles, California—Feb. 21, 1955.

Mr. M. B. Scott, President M. B. Scott, Incorporated, 9165 Sunset Boulevard, West Hollywood, California—Feb. 21, 1955.

Mr. Howard Shein, c/o Shein & Honig, 821 Market Street, San Francisco, California—Feb. 21, 1955.

Arthur R. Currey, individually and as President of Currey Air Transport, Ltd., 452 Jefferson St., Galesburg, Illinois—Feb. 25, 1955.

Ida Mae Hermann, individually and as Secretary-Treasurer of Great Lakes Airlines, Inc., as President of Air International, Inc., and as co-partner with Irving E. Hermann d/b/a Nevada Aero Trades Company, Lockheed Air Terminal, Burbank, California—Feb. 25, 1955.

Irving E. Hermann, individually and as President of Great Lakes Airlines Agency, Inc., Lockheed Air Terminal, Burbank, California—Feb. 25, 1955.

production of documents and records of various respondents, or documents and records of other persons believed to have bearing on the respondents' activities and the relationships between them. In addition, a "Motion for the Production of Documents" by the respondents has been filed and served upon respondents' counsel. The materials there requested appear also to be included in certain of the subpoenas listed in the margin addressed to the individual officers of the respondents. Treating this motion for present purposes as the equivalent of an application for issuance of a subpoena under our Rule 19 (14 CFR 302.19), the Examiner appears to have granted the motion and to have regarded it as a subpoena directed generally to the respondents, as opposed to their individual officers. For purposes of this referral, the parties appear to have agreed that the motion for production may be regarded as

Mrs. Gladys M. Sheppard, individually and as Secretary-Treasurer of various named Skycoach Airlines Agencies, c/o Skycoach Agency of Nevada, Inc., Lockheed Air Terminal, Burbank, California—Feb. 25, 1955.

Robert M. Smith, individually and as Executive Vice-President of Currey Air Transport, Ltd., Oakland Municipal Airport, Oakland, California—Feb. 25, 1955.

Mr. H. C. Richards, Lockheed Air Terminal, Burbank, California—Mar. 1, 1955.

Capt. G. D. Thompson, Lockheed Air Terminal, Burbank, California—Mar. 1, 1955.

Mr. Leonard Rosen, 18015 Keswick Street, Reseda, California—Mar. 2, 1955.

Mr. George Patterson, Lockheed Air Terminal, Burbank, California—March 9, 1955.

such a subpoena, and it is so treated here. We understand the [62] Examiner's referral to relate only to questions of substantive validity, and accordingly do not consider or pass upon certain objections to service made before the Examiner.

Our examination of the subpoenas and the contentions of the parties both before the Examiner and in connection with the instant referral convince us that, except in one respect hereinafter noted, the motions to quash properly were, and should be, denied. The subpoenas are alleged to be unlawful in that they (1) are vague and ambiguous and cannot be understood or complied with, (2) are excessively broad and unreasonable in scope, (3) are beyond the jurisdiction of the Board in that the materials sought may relate to matters other than those involved in the Board's proceeding, (4) are oppressive and burdensome, and duplicative of one another, (5) constitute a general fishing expedition into the affairs of the respondents, (6) are directed in certain instances to persons who are not respondents herein, (7) seek to bare personal records of these individual persons and constitute an invasion of their privacy and an unreasonable search and seizure prohibited by the Fourth Amendment, and (8) will expose the business, financial and personal affairs of the persons to the public.

The subpoenas are not vague and indefinite, or incapable of understanding. Each one specifies the period concerning which documents and records are to be produced where appropriate, and describes the desired materials with particularity. In the

light of the charges against the respondents, and particularly those relating to common control and activities constituting air transportation on the part of the non-carrier respondents, its does not appear to us that the subpoenas(are excessively broad or unreasonable in scope. In this connection, we note that Section 1004 of the Act specifically authorizes the issuance of subpoenas for the "production of ALL books, papers, and documents relating to any matter under investigation." [Emphasis added]. The materials requested appear to be relevant to the matters under investigation here, and the subpoenas involved plainly do not transcend our statutory authority.

While certain of the subpoenas request numerous categories of documents and records of the respondents, there is no factual showing of the actual volume of materials involved, or that compliance will be unduly burdensome or oppressive. To the extent that compliance might require the yielding up of books and records necessary for the conduct of day-to-day business, or prove otherwise oppressive, the Examiner upon a proper showing to this effect has ample authority to permit an examination and copying of the materials at the places of business involved, and under conditions which will produce a minimum of interference with business ac-

* See, also, Section 407(e) which permits the Board to have access to "ALL accounts, records, and memoranda; including ALL documents, papers, and correspondence" kept by air carriers and their affiliates. [Emphasis added.]

tivities. We also note that any problems of duplication of materials may be resolved between the parties; duplication need result only if the persons to whom the subpoenas are directed are uncooperative.

Neither do we find any merit in the remaining contentions of illegality in the subpoenas. They do not constitute fishing expeditions, but rather are requests for material relevant to previously defined charges and issues. The fact that some of them are directed to individuals who are not respondents herein is of no moment; the Act authorizes the issuance of subpoenas to any person having the information pertinent to a Board proceeding. The documents in question are not privileged as against the Government, but rather appear to have bearing on matters into which the Board is specifically authorized to inquire. No invasion of privacy or constitutional right is here involved. Moreover, under the Act and our rules, the persons involved may request the documents to be withheld from public disclosure if the circumstances warrant such action at the time of their production.

We note that the subpoenas directed to Messrs. Doyle and Gensel in terms require the production of "all correspondence" for their agencies for the periods specified, whereas the remaining subpoenas to the respondents or their officials appear to request only correspondence between the particular respondent and the other respondents or persons acting in their behalf. We are not convinced that "all correspondence" need be produced, and will

direct the Examiner to modify these two subpoenas to conform to the others in this respect:

On the basis of the foregoing,

It Is Ordered That:

1. The subpoenas directed to Mr. Patrick Doyle and Mr. Howard Gensel be modified by the Examiner as hereinbefore provided.
2. The motions to quash be, and they are hereby, denied in all other respects.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,
Secretary

[63]

[Endorsed]: Filed March 29, 1955.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon petition of the Civil Aeronautics Board, duly verified by George S. Lapham, Compliance Attorney for said Board, filed the 29th day of March, 1955, it is hereby

Ordered, that Ida Mae Hermann, Irving E. Hermann, Robert M. Smith, M. B. Scott, Harold Shein, H. C. Richards, George Patterson, Leonard Rosen, Orville Kelman, and Captain G. D. Thompson, and each of them, personally appear before this Court on the 4th day of April, 1955 at 10 o'clock a.m. of that day at Court Room No. 2, U.S. Post Office and Court House Building, Temple and Spring Streets in the City of Los Angeles, California, and show

cause why an Order should not issue requiring the said persons, and each of them, to appear before F. Merritt Ruhlen, Hearing Examiner of the Civil Aeronautics Board to testify, and produce the books, papers, and documents as demanded by the [64] subpoenas issued heretofore by F. Merritt Ruhlen as Hearing Examiner of the Civil Aeronautics Board.

It is further ordered, that the service of a copy of this Order to Show Cause, together with a copy of the petition of the Civil Aeronautics Board, upon each of the aforesaid persons be made on or before the 31st day of March, 1955, and that such service shall be deemed sufficient notice.

Dated: Los Angeles, California, March 29, 1955.

/s/ WM. C. MATHES,

United States District Judge. [65]

[Endorsed]: Filed March 29, 1955.

[Title of District Court and Cause.]

**RETURN TO ORDER TO SHOW CAUSE AND
ANSWER TO PETITION to Compel the At-
tendance as Witnesses of Certain Persons and
the Production of Documentary Evidence be-
fore a Hearing Examiner of the Civil Aero-
nautics Board.**

To the United States District Court for the South-
ern District of California, Central Division:

In response to the Order to Show Cause entered
by this Court on the 29th day of March, 1955, and

in answer to the Petition of the petitioner, the Civil Aeronautics Board, filed in this proceeding, respondents Ida Mae Hermann, Irving E. Hermann, Robert M. Smith, M. B. Scott, Harold Shein, H. C. Richards, George Patterson, Leonard Rosen, Orville Kelman, and Captain G. D. Thompson admit, deny and allege as follows:

1. Respondents state that the allegations contained in paragraph 1 of the Petition are matters of law to which said respondents need not make answer. Said respondents deny the allegations contained in paragraph 1 of the Petition insofar as the said allegations may be interpreted as alleging matters of fact.
2. That the allegations contained in paragraph 2 of the Petition are matters of law to which said respondents need not make answer. [89]
3. That the allegations contained in paragraph 3 are matters of law to which respondents need not make answer. Said respondents deny the allegations contained in paragraph 3 of the Petition insofar as the said allegations may be interpreted as alleging matters of fact.
4. That the allegations contained in paragraph 4 of said Petition are matters of law to which respondents need not make answer. Said respondents deny the allegations contained in paragraph 4 of the said Petition insofar as the said allegations may be interpreted as alleging matters of fact.
5. That the allegations contained in paragraph 5 of said Petition are matters of law to which said respondents need not make answer.

6. That the allegations contained in paragraph 6 of the said Petition are matters of law to which respondents need not make answer. Said respondents deny the allegations contained in paragraph 6 of the said Petition insofar as the said allegations may be interpreted as alleging matters of fact.

7. Respondents admit that on October 4, 1954, the Board instituted an enforcement proceeding entitled "In the Matter of Great Lakes Airlines, Inc., et al., Docket No. 6908". Respondents admit that that proceeding involves a group of twenty respondents, including two air carriers, two individuals, a partnership engaged in the leasing of aircraft, two other companies, and thirteen ticket agencies. Respondents admit that the issues in the proceeding known as Docket No. 6908 relate to alleged violations of various provisions of the Act and various requirements and regulations of the Civil Aeronautics Board. Respondents deny the other allegations contained in paragraph 7, insofar as they may be interpreted as alleging matters of fact.

8. Respondents admit the allegations contained in paragraph 8 of the Petition, with the following exceptions: [90]

(a) Respondents deny that Air International, Inc., was at the time of the issuance and service of the said subpoena, or is now, a corporation having an office and place of business at Lockheed Air Terminal, Burbank, California, or that Air International, Inc. has an office or place of business within the jurisdiction of this Court.

(b) Respondents deny that Nevada Aero Trades

Company was at the time of the issuance and service of the said subpoena, or is now, a co-partnership having an office and place of business at Lockheed Air Terminal, Burbank, California, or that Nevada Aero Trades Company has an office or place of business within the jurisdiction of this Court.

(c) Respondents deny that Great Lakes Airlines Agency, Inc. was at the time of the issuance and service of the said subpoena, or is now, a corporation having an office and place of business at Lockheed Air Terminal, Burbank, California, or that Great Lakes Airlines Agency, Inc., has an office or place of business within the jurisdiction of this Court.

9. Respondents deny the allegations contained in paragraph 9 of the said Petition.

10. Upon information and belief, respondents deny the allegations contained in paragraph 10 of the said Petition.

11. Respondents admit the allegations contained in paragraph 11 of the said Petition.

12. Respondents admit the allegations contained in paragraph 12 of the said Petition.

13. Respondents admit that the Hearing Examiner fixed March 29, 1955, as the new return date for said subpoenas. Respondents admit that the respondents did not appear before the Hearing Examiner of the Civil Aeronautics Board on March 29, 1955. Respondents admit that Richard E. Keatinge stated on March 29, 1955, that the subpoenas would not be obeyed unless and until the persons subpoenaed were [91] compelled to do so by an

order of a court of competent jurisdiction. Upon information and belief respondents deny the other allegations contained in paragraph 13 of the said Petition.

Further answering the Petition filed herein, respondents rely on any and all legal defenses which may be or become available to them, including the following:

14. Respondents allege that on or about November 16, 1954, the respondents in the proceeding known as Docket No. 6908 filed a verified answer to the petition for enforcement and complaint referred to in paragraph 7 of the Petition herein, and which is attached to the said Petition as Exhibit A thereof. A copy of the said answer is attached hereto as Exhibit 1 and made a part hereof.

15. Respondents allege that the subpoenas served on the said respondents are oppressive and unreasonable, and constitute an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States.

16. Respondents allege that the enforcement of the subpoenas served on the said respondents constitute a general fishing expedition of the affairs of the parties named in the said subpoenas.

17. Respondents allege that compliance with the said subpoenas would unduly and unreasonably hamper and interfere with the business conducted by the companies named in the said subpoenas.

18. Respondents allege that the documents sought in the said subpoenas are not material to the issues in the proceeding known as Docket No. 6908.

19. Respondents allege that the said subpoenas are verbose, prolix, indefinite, and vague, and cannot be reasonably understood or complied with by the respondents.

20. Respondents allege that most of the documents sought in the said subpoenas do not relate to the matters under investigation in the proceeding known as Docket No. 6908. [92]

21. Respondents allege that the burden of complying with the said subpoenas is wholly out of proportion with the evidentiary requirements of the petitioner in the proceeding known as Docket No. 6908.

22. Respondents allege that the companies named in the said subpoenas will be unable to properly conduct their respective businesses if compliance with the said subpoenas is ordered.

23. Respondents allege that the said subpoenas call for the production of books, papers, records and documents which relate solely to the personal financial and business affairs of respondents Ida Mae Hermann, Irving E. Hermann, Robert M. Smith, and Leonard I. Rosen, which said documents are irrelevant and immaterial to the proceeding known as Docket No. 6908.

24. Respondents allege that the petitioner, through its agents, representatives and employees, has made no effort to restrict the papers, books, records and documents sought in the said subpoenas to those which relate to or may reasonably relate to the issues in the proceeding known as Docket No. 6908.

25. Respondents allege that the service of the ad-

ministrative subpoenas upon Respondents Scott, Shein, and Kelman, was made by registered mail and is invalid.

Wherefore, respondents pray that this Court dismiss the Petition filed herein and that there be granted such other and further relief as this Court may deem fit and proper in the premises.

KEATINGE, ARNOLD & OLDER

/s/ By ROLAND E. GINSBURG,
Attorneys for Respondents

[93]

Duly Verified.

[94]

EXHIBIT No. 1

Before the Civil Aeronautics Board
Washington, D.C.

Docket No. 6908

In the Matter of GREAT LAKES AIRLINES,
INC., et al.

ANSWER OF RESPONDENTS

In answer to the complaint of the Enforcement Attorney filed in this proceeding, Respondents, Great Lakes Airlines, Inc., Currey Air Transport, Limited, Air International Inc., Great Lakes Airlines Agency, Inc., Skycoach Agency of Nevada, Inc., Skycoach Airlines Agency of New York, Inc., Skycoach Airlines Agency of Chicago, Inc., Skycoach Agency of Los Angeles, Inc., Skycoach Airlines Agency of Newark, Inc., Super Skycoach Air-

Exhibit No 1—(Continued)

lines Agency, Inc., Skycoach Airlines Agency of Boston, Inc., Skycoach Airlines Agency of Virginia, Inc., Skycoach Airlines Agency of Milwaukee, Inc., Skycoach Airlines Agency of Detroit, Inc., Skycoach Airlines Agency of Washington, Inc., Skycoach Agency of San Francisco, Inc., Nevada Aero Trades Company, a Nevada co-partnership, and Irving E. Hermann and Ida Mae Hermann, individually and as general partners of Nevada Aero Trades Company, state as follows:

1. Admit the allegations contained in paragraph 1.
2. Admit the allegations contained in paragraph 2.
3. Respondents Irving E. Hermann and Ida Mae Hermann admit that they were at all times mentioned in the complaint herein and now are residents of the State of California and citizens of the United States; said respondents further admit that they are the general partners of Nevada Aero Trades Company, a Nevada co-partnership with its principal office and place of business at 125 South Second Street, Las Vegas, Nevada; said respondents, and each of them, deny the other allegations contained in paragraph 3. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 3, and therefore deny the same.
4. Respondents, Irving E. Hermann and Ida Mae Hermann, individually and as general partners of Nevada Aero Trades Company, a co-partnership, deny the allegations contained in paragraph 4. The other respondents above named state that they have

Exhibit No. 1—(Continued)

no direct knowledge of the allegations contained in paragraph 4, and therefore deny the same.

5. Respondents Air International, Inc. and Ida Mae Hermann admit that Air International, Inc. was at all times mentioned in the complaint herein and now is a corporation organized and existing under the laws of the State of Nevada; said respondents deny the other allegations contained in paragraph 5. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 5, and therefore deny the same.

6. Respondents Air International, Inc., and Ida Mae Hermann deny the allegations contained in paragraph 6. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 6, and therefore deny the same.

7. Respondents Great Lakes Airlines Agency, Inc., [97]. Irving E. Hermann and Ida Mae Hermann admit that Great Lakes Airlines Agency, Inc. is a corporation organized and existing under the laws of the State of Nevada; said respondents deny the other allegations contained in paragraph 7. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 7, and therefore deny the same.

8. Respondents Great Lakes Airlines Agency, Inc., Irving E. Hermann and Ida Mae Hermann deny the allegations contained in paragraph 8. The other respondents above named state that they have

Exhibit No. 1—(Continued)

no direct knowledge of the allegations contained in paragraph 8, and therefore deny the same.

9. Respondents Great Lakes Airlines Agency, Inc., Irving E. Hermann and Ida Mae Hermann admit that Irving E. Hermann and Ida Mae Hermann were and are directors of Great Lakes Airlines Agency, Inc., and that Irving E. Hermann was and is the president of Great Lakes Airlines Agency, Inc.; said respondents deny the other allegations contained in paragraph 9. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 9, and therefore deny the same.

10. Respondents, Great Lakes Airlines Agency, Inc., Irving E. Hermann and Ida Mae Hermann admit that Nancy Heakin was a director and a vice-president of Great Lakes Airlines Agency, Inc. and is the sister of Ida Mae Hermann; said respondents deny the other allegations contained in paragraph 10. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 10, and therefore deny the same.

11. (a) Respondent Skycoach Agency of Nevada, Inc. admits that it was at all times mentioned in the instant [98] complaint, and is now, a corporation organized and existing under the laws of the State of Nevada, with its principal office and place of business located at Lockheed Air Terminal, Burbank, California.

(b) Respondent Skycoach Agency Airlines of

Exhibit No. 1—(Continued)

New York, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada, with its principal office and place of business located at 702 7th Ave., New York City, New York.

(c) Respondent Skycoach Airlines of Chicago, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada, with its principal office and place of business located at 36 North Clark St., Chicago, Illinois.

(d) Respondent Skycoach Agency of Los Angeles, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

(e) Respondent Skycoach Airlines Agency of Newark, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

(f) Respondent Super Skycoach Airlines Agency, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada, with its principal place of business located at Philadelphia International Airport, Philadelphia, Pa.

(g) Respondent Skycoach Airlines Agency of

Exhibit No. 1—(Continued)

Boston, Inc. admits that it was at all times mentioned in the instant [99] complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

(h) Respondent Skyeoach Airlines Agency of Virginia, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

(i) Respondent Skycoach Airlines Agency of Milwaukee, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

(j) Respondent Skycoach Airlines Agency of Detroit, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

(k) Respondent Skycoach Airlines Agency, of Washington, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

(l) Respondent Skycoach Agency of San Francisco, Inc. admits that it was at all times mentioned in the instant complaint, and is now, a corporation organized and existing under the laws of the State of Nevada.

Each and all of the foregoing respondents deny the other allegations contained in paragraph 11.

Exhibit No. 1—(Continued)

The above other named respondents state that they have no direct knowledge of the allegations contained in paragraph 11, and therefore deny the same.

12. Each and all of the Skycoach respondents named in paragraph 11 of the instant complaint deny the allegations contained in paragraph 12 of said complaint. The other above named respondents state that they have no direct knowledge of the [100] allegations contained in paragraph 12, and therefore deny the same.

13. Respondent Currey Air Transport, Limited admits it is an irregular transport carrier; said respondent denies the other allegations contained in paragraph 13. Respondent Currey Air Transport, Limited further states that the allegations contained in said paragraph 13 are matters of law to which this respondent need not make answer; however, in view of Rule 207 of the Board's Rules of Practice, said respondent denies the allegations contained in the aforementioned paragraph of the complaint in so far as they might be interpreted as alleging matters of fact. Said respondent admits the existence of the various rules, regulations and statutes referred to, but it does not admit their validity. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 13 and therefore deny the same.

14. Respondent Great Lakes Airlines, Inc. admits that at all times mentioned in the instant complaint said respondent was and now is a large irregular

Exhibit No. 1—(Continued)

carrier; said respondent denies the other allegations contained in paragraph 13. Respondent Great Lakes Airlines, Inc. further states that the allegations contained in said paragraph 14 are matters of law to which this respondent need not make answer; however, in view of Rule 207 of the Board's Rules of Practice, said respondent denies the allegations contained in the aforementioned paragraph of the complaint in so far as they might be interpreted as alleging matters of fact. Said respondent admits the existence of the various rules, regulations and statutes referred to but does not admit their validity. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 14, and therefore deny the same. [101]

15. Respondent Great Lakes Airlines, Inc., admits that since August 28, 1952 the operating authority of Great Lakes Airlines, Inc. has been subject to a cease and desist order, Order No. E-6748, Docket No. 4161, as thereafter amended; said respondent denies the other allegations contained in paragraph 15. Said respondent further states that the allegations contained in paragraph 15 are matters of law to which said respondent need not make answer; however, in view of Rule 207 of the Board's Rules of Practice, said respondent denies the allegations contained in paragraph 15 of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondent admits the existence of the various rules, regulations, stat-

Exhibit No. 1—(Continued)

utes and orders referred to, but does not admit their validity. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 15, and therefore deny the same.

16. Respondents deny the allegations contained in paragraph 16; said respondents further state that the allegations contained in paragraph 16 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice, said respondents deny the allegations contained in paragraph 16 of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

17. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited, each for itself, admit that neither of said respondents has been granted a certificate of public convenience and necessity pursuant to Section 401(a) of the Civil Aeronautics Act, and admit the issuance by the Civil Aeronautics Board on March 2, 1951 of Order No. E-5166; said respondents [102] deny the other allegations contained in paragraph 17. Said respondents further state that the allegations contained in paragraph 17 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice, said respondents deny the allegations contained in paragraph 17 of the complaint in so far as they may

Exhibit No. 1—(Continued)

be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 17, and therefore deny the same.

18. Respondents deny the allegations contained in paragraph 18. Said respondents further state that the allegations contained in paragraph 18 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice, said respondents deny the allegations contained in paragraph 18 of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

19. Respondents deny the allegations contained in paragraph 19.

20. Respondents Great Lakes Airlines, Inc., Irving E. Hermann and Ida Mae Hermann admit that since prior to December 1, 1951, Irving E. Hermann and Ida Mae Hermann have been and now are directors and the sole stockholders of Great Lakes Airlines, Inc., and that Irving E. Hermann was and now is the president of Great Lakes Airlines, Inc., said respondents deny the other allegations contained in paragraph 20. The other respondents above [103] named state that they have no direct

Exhibit No 1—(Continued)

knowledge of the allegations contained in paragraph 20, and therefore deny the same.

21. Respondents Nevada Aero Trades Company, Irving E. Hermann and Ida Mae Hermann admit that since prior to December 1, 1951 said respondents were and now are the sole general partners of Nevada Aero Trades Company, a Nevada co-partnership.

22. Respondents Nevada Aero Trades Company, Irving E. Hermann and Ida Mae Hermann deny the allegations contained in paragraph 22. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 22, and therefore deny the same.

23. Respondents Nevada Aero Trades Company, Irving E. Hermann and Ida Mae Hermann admit that since on or about June 15, 1953, Nevada Aero Trades Company, a Nevada co-partnership, has been the conditional vendee, pursuant to a conditional sales contract with Aviation Credit Corporation as conditional vendor, of DC-4 aircraft No. N37472. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 23, and therefore deny the same.

24. Respondent Air International, Inc. and Ida Mae Hermann admit the allegations contained in paragraph 24. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 24, and therefore deny the same.

Exhibit No. 1—(Continued)

25. Respondent Currey Air Transport, Limited, admits the allegations contained in paragraph 25. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 25, and therefore deny the same.

26. Respondent Great Lakes Airlines, Inc. admits that Robert M. Smith was employed by Great Lakes Airlines, Inc. on or about July 1, 1949 and became assistant operations manager of [104] Great Lakes Airlines, Inc. on or about August 30, 1950; respondent, Great Lakes Airlines, Inc. further admits that Robert M. Smith held such position of assistant operations manager until on or about November 1, 1951. The other respondents above named, and respondent, Great Lakes Airlines, Inc. as to all other allegations contained in paragraph 26 except as admitted hereinabove, state that they have no direct knowledge of the allegations contained in paragraph 26, and therefore deny the same.

27. Respondent Currey Air Transport Limited admits the allegations contained in paragraph 27. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 27, and therefore deny the same.

28. Respondent Currey Air Transport, Limited, admits the allegations contained in paragraph 28. The other respondents above named state that they have no direct knowledge of the allegations con-

Exhibit No. 1—(Continued)

tained in paragraph 28, and therefore deny the same.

29. Respondents Currey Air Transport, Limited, Nevada Aero Trades Company, Irving E. Hermann and Ida Mae Hermann admit that on or about May 1, 1952, Currey Air Transport, Limited leased C-46 aircraft N5616V from Nevada Aero Trades Company; respondent, Currey Air Transport, Limited, admits that on or about May 1, 1952 Currey Air Transport, Limited leased C-46 aircraft N1628M from Two Eight Mike, Inc. The other respondents and respondents Currey Air Transport, Limited, Nevada Aero Trades Company, Irving E. Hermann and Ida Mae Hermann, as to all other allegations contained in paragraph 29 except as admitted hereinabove, state that they have no direct knowledge of the allegations contained in paragraph 29, and therefore deny the same.

30. Respondent Currey Air Transport, Limited, admits the allegations contained in paragraph 30. The other respondents [105] above named state that they have no direct knowledge of the allegations contained in paragraph 30, and therefore deny the same.

31. Respondent Currey Air Transport, Limited, and the respondent ticket agencies named in paragraph 11 of the instant complaint admit the allegations contained in paragraph 31. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 31, and therefore deny the same.

Exhibit No. 1—(Continued)

32. Respondent Currey Air Transport, Limited, and the respondent ticket agencies named in paragraph 11 of the instant complaint admit the allegations contained in paragraph 32. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 32, and therefore deny the same.

33. Respondent Currey Air Transport, Limited, Irving E. Hermann and Ida Mae Hermann deny the allegations contained in paragraph 33. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 33, and therefore deny the same.

34. Respondents Currey Air Transport, Limited, Irving E. Hermann and Ida Mae Hermann deny the allegations contained in paragraph 34. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 34, and therefore deny the same.

35. Respondents Currey Air Transport, Limited, Irving E. Hermann and Ida Mae Hermann deny the allegations contained in paragraph 35. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 35, and therefore deny the same.

36. Respondent Great Lakes Airlines, Inc., admits that since on or about October 1, 1952 the maintenance division [106] of Great Lakes Airlines, Inc. has performed maintenance work upon aircraft leased by Great Lakes Airlines, Inc. Respondent Great Lakes Airlines, Inc. and Currey Air Trans-

Exhibit No 1—(Continued)

port, Inc. admit that since on or about October 1, 1952 the maintenance division of Great Lakes Airlines has performed maintenance upon aircraft leased by Currey Air Transport, Limited. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 36, and therefore deny the same.

37. Respondents Great Lakes Airlines, Inc., Currey Air Transport, Limited, and Air International, Inc., deny the allegations contained in paragraph 37. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 37, and therefore deny the same.

38. Respondents deny the allegations contained in paragraph 38.

39. Respondent Great Lakes Airlines, Inc., admits that since on or about December 1, 1951 said respondent has been the lessee of facilities at Lockheed Air Terminal, Burbank, California; said respondent denies the other allegations contained in paragraph 39. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 39, and therefore deny the same.

40. Respondent Great Lakes Airlines, Inc., admits the allegations of paragraph 40. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 40, and therefore deny the same.

41. Respondent Great Lakes Airlines, Inc., ad-

Exhibit No 1—(Continued)

mits the allegations of paragraph 41. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 41, and therefore deny the same.

42. Respondent Great Lakes Airlines, Inc., and the [107] Skycoach Ticket Agency respondents listed in paragraph 11 of the complaint admit that since on or about December 1, 1951 the counter spaces referred to in paragraphs 30, 40 and 41 of this answer and paragraphs 39, 40 and 41 of the instant complaint have been used by one or more of the Skycoach Ticket Agency respondents named in paragraph 11 of the instant complaint; said respondents further allege that said uses of said counter spaces by said Skycoach Ticket Agency respondents have been made pursuant to, and in accordance with, agreements filed by said respondents with the Civil Aeronautics Board. Said respondents deny the other allegations contained in paragraph 42. The other respondents above named state that they have no direct knowledge of the allegations contained in paragraph 42, and therefore deny the same.

43. Respondents Great Lakes Airlines, Inc., Skycoach Agency of Nevada, Inc., Skycoach Agency of San Francisco, Inc. and Skycoach Agency of Los Angeles, Inc. admit that since December 1, 1951 the aforesaid Skycoach respondents have assisted respondent Great Lake Airlines, Inc. in securing passengers and have further assisted respondent Great Lakes Airlines, Inc. in connection with details of flight dispatch; said respondents deny the other al-

Exhibit No 1—(Continued)

legations contained in paragraph 43. Respondents Currey Air Transport, Limited, Skycoach Agency of Nevada, Inc., Skycoach Agency of San Francisco, Inc., and Skycoach Agency of Los Angeles, Inc., deny the allegations contained in paragraph 43. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 43 and therefore deny the same.

44. Respondents Great Lakes Airlines, Inc., Currey Air Transport, Limited, Skycoach Airlines Agency of Chicago, Inc., Skycoach Airlines Agency of New York, Inc. and Super [108] Skycoach Airlines Agency, Inc. admit that since on or about June 27, 1952 the aforesaid respondents have assisted respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited, in securing passengers and have further assisted respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited, in connection with details of flight dispatch; said respondents deny the other allegations contained in paragraph 44. Skycoach Airlines Agency of Newark, Inc., Skycoach Airlines Agency of Boston, Inc., Skycoach Airlines Agency of Virginia, Inc., and Skycoach Airlines Agency of Detroit, Inc. deny the allegations contained in paragraph 44. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 44 and therefore deny the same.

45. Great Lakes Airlines, Inc., Currey Air Transport, Limited, Skycoach Airlines Agency of Wash-

Exhibit No 1—(Continued)

ington, Inc. and Skycoach Airlines Agency of Milwaukee, Inc. deny the allegations contained in paragraph 45. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 45, and therefore deny the same.

46. Respondents Irving E. Hermann, Ida Mae Hermann and the Skycoach Ticket Agency respondents listed in paragraphs 43, 44 and 45 of the instant complaint deny the allegations contained in paragraph 46 thereof. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 46 and therefore deny the same.

47. The Skycoach Ticket Agency respondents listed in paragraphs 11, 43, 44 and 45 of the instant complaint admit that Frank A. Heakin has been and is President of all of the said Skycoach Ticket Agency respondents and is the brother of respondent Ida Mae Hermann. Respondent Ida Mae Hermann admits that Frank A. Heakin is her brother. The other respondents, [109] and except as admitted hereinabove, respondent Ida Mae Hermann, state that they have no direct knowledge of the allegations contained in paragraph 47 and therefore deny the same.

48. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 48. The other above named respondents state that they have no direct

Exhibit No 1—(Continued)

knowledge of the allegations contained in paragraph 48 and therefore deny the same.

49. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited, deny the allegations contained in paragraph 49. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 49 and therefore deny the same.

50. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 50. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 50 and therefore deny the same.

51. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 51. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 51 and therefore deny the same.

52. Respondents Currey Air Transport, Limited, Nevada Aero Trades Company, Irving E. Hermann and Ida Mae Hermann deny the allegations contained in paragraph 52. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 52 and therefore deny the same.

53. Respondent Great Lakes Airlines, Inc. admits the allegations contained in paragraph 53. The other above named [110] respondents state that they

Exhibit No 1—(Continued)

have no direct knowledge of the allegations contained in paragraph 53 and therefore deny the same.

54. Respondents Great Lakes Airlines, Inc., Currey Air Transport, Limited and the Skycoach Ticket Agency corporations named in paragraph 11 of the instant complaint admit that said Skycoach Ticket Agency respondents have assisted respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited in securing passengers and have further assisted respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited in connection with details of flight dispatch; said respondents deny the other allegations contained in paragraph 54. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 54 and therefore deny the same.

55. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 55. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 55, and therefore deny the same.

56. Respondents Great Lakes Airlines, Inc., Currey Air Transport, Limited and the Skycoach Ticket Agencies named in paragraph 11 of the instant complaint deny the allegations contained in paragraph 56. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 56 and therefore deny the same.

Exhibit No 1—(Continued)

57. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 57. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 57 and therefore deny the same. [111]

58. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 58. Said respondents state that the allegations contained in paragraph 58 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 58 and therefore deny the same.

59. Respondent Great Lakes Airlines, Inc. denies the allegations contained in paragraph 59. Said respondent states that the allegations contained in paragraph 59 are matters of law to which said respondent need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondent denies the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters

Exhibit No 1—(Continued)

of fact. Said respondent admits the existence of the various rules, regulations, statutes and orders referred to, but does not admit their validity. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 59 and therefore deny the same.

60. Respondents deny the allegations contained in paragraph 60. Said respondents state that the allegations contained in paragraph 60 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in [112] so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

61. Respondents deny the allegations contained in paragraph 61. Said respondents state that the allegations contained in paragraph 61 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

62. Respondents deny the allegations contained

Exhibit No 1—(Continued)

in paragraph 62. Said respondents state that the allegations contained in paragraph 62 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

63. Respondents deny the allegations contained in paragraph 63. Said respondents state that the allegations contained in paragraph 63 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, [113] regulations, statutes and orders referred to, but do not admit their validity.

64. Respondents deny the allegations contained in paragraph 64. Said respondents state that the allegations contained in paragraph 64 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be inter-

Exhibit No 1—(Continued)

preted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

65. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 65. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 65 and therefore deny the same.

66. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 66. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 66 and therefore deny the same.

67. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 67. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 67 and therefore deny the same.

68. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 68. Said respondents state that the allegations contained in paragraph 68 are matters of law to which said [114] respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far

Exhibit No. 1—(Continued)

as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 68 and therefore deny the same.

69. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 69. Said respondents state that the allegations contained in paragraph 69 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 69 and therefore deny the same.

70. Respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited deny the allegations contained in paragraph 70. Said respondents state that the allegations contained in paragraph 70 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned par-

Exhibit No. 1—(Continued)

agraph of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit the existence of the various rules, regulations, [115] statutes and orders referred to, but do not admit their validity. The other above named respondents state that they have no direct knowledge of the allegations contained in paragraph 70 and therefore deny the same.

71. Respondents state that the allegations contained in paragraph 71 are matters of law to which these respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters of fact. Respondents admit the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

72. Respondents deny the allegations contained in paragraph 72 of the complaint.

73. Respondents admit the allegations contained in paragraph 73 of the complaint.

74. Respondents deny the allegations contained in paragraph 74. Said respondents state that the allegations contained in paragraph 74 are matters of law to which said respondents need not make answer; however, in view of Rule 207 of the Board's Rules of Practice said respondents deny the allegations contained in the aforementioned paragraph of the complaint in so far as they may be interpreted as alleging matters of fact. Said respondents admit

Exhibit No. 1—(Continued)

the existence of the various rules, regulations, statutes and orders referred to, but do not admit their validity.

75. Respondents deny the allegations contained in paragraph 75 of the complaint.

76. Respondents deny the allegations contained in paragraph 76 of the complaint.

77. Respondents deny the allegations contained in paragraph 77 of the complaint. [116]

In further answering the complaint, respondents rely on any and all legal defenses which may be or become available to them, including but not limited to the following:

78. Respondents have been charged with violating various provisions of the presently existing Part 291 of the Board's Economic Regulations. Since authorization to operate was granted to respondent carriers Great Lakes Airlines, Inc. and Currey Air Transport, Limited, these provisions have been adopted by way of amendment to previously existing regulations. These amendments constitute changes in or amendments to the licenses previously issued to the above named respondent carriers. These various amendatory regulations were not adopted in accordance with the requirement of adjudicatory proceedings and are, therefore, invalid as to these respondent carriers.

79. The rules and regulations adopted by the Board governing the conduct of irregular carrier operations have been adopted without any adjudicatory hearing, without the submission of any evi-

Exhibit No. 1—(Continued)

dence and without any determination by the Board based on evidence or adequate investigation as to whether such rules and regulations are reasonable. All of these regulations with the exception of the original 1938 non-scheduled air carrier exemption have been adopted by way of amendment to existing regulations and have constituted amendments to or changes in previously existing licenses held by air carrier respondents. These regulations, although seriously and adversely affecting irregular operators by limiting and changing their previously existing licenses, are based on no analysis of actual irregular carrier operations, and have been adopted without any findings of any kind that such amendatory regulations could be complied with by previously licensed carriers. These regulations are, therefore, invalid as to said respondents. [117]

80. At the time of adoption of the amendments involved in this complaint, the Board and its staff, based on its experience with irregular carrier operations, had reason to know, and in fact knew that certain practices in the industry had developed because of economic necessity in an effort on the part of the licensees to comply with the Board's requirements with respect to regularity and frequency of operations with large transport type aircraft. Although these practices, such as the use of a common ticket agency by several carriers, the issuance of exchange orders, and the acceptance by one carrier of tickets originally issued in the name of another, were not unlawful, and were essential to continued

Exhibit No. 1—(Continued)

operations by irregular carriers, the Board, by amendment to its regulations, purported to make such activities unlawful, thereby amending and changing licenses previously issued to respondents. These changes and amendments were made without the benefit of evidentiary proceedings and without any attempt at investigation by the Board into the matter of the feasibility of such amendments. Lack of such evidentiary hearing alone renders these amendments invalid as to respondents. In addition, based on its general experience with irregular carrier operations, the Board and its staff had reason to believe that irregular carriers could not comply with these amendatory regulations. The amendatory regulations are, therefore, arbitrary, capricious, unreasonable and invalid.

81. The filing of the complaint in this proceeding is premature in view of the failure on the part of the Board or its Enforcement Section to comply with the requirements of Rule 204 of the Board's Rules of Practice. A proposal of adjustment must be submitted to respondents in writing, accompanied by a copy of the complaint, prior to filing of the complaint. [118] A notice of complaint must be given to respondents with fifteen days in which to make response.

82. The Board has failed to comply with Section 9(b) of the Administrative Procedure Act. The acts or conduct of which complaint is made which are alleged to warrant withdrawal, suspension, revocation or annulment of any license must be called to

Exhibit No. 1—(Continued)

the attention of the licensee by the agency in writing, and the licensee must be accorded an opportunity to demonstrate or achieve compliance with all lawful requirements. No such opportunity has been extended to any of the respondents. On this ground the filing of the complaint in this case is premature.

83. Insofar as any acts allegedly performed by these respondents have been pursuant to agreements heretofore filed with the Board, those acts cannot be complained of in a revocation proceeding until action has been taken by the Board with respect to such agreements, and unless and until as a result of such action by the Board the acts complained of are found to have been unlawful. Although agreements have been filed by these respondents, no action has been taken by the Board on any such agreements.

84. Under properly applicable rules and regulations, revocation of a letter of registration issued to an irregular carrier can be effected only in a proceeding in which there is in issue the question whether it is in the public interest to revoke such letter. Pertinent to that issue evidence must be received and findings made with respect to all of the considerations set forth in the Civil Aeronautics Act bearing on the question of public interest as it pertains to air transportation. Since that issue is excluded from this proceeding, the complaint does not state a proper cause of action against respondents,

Exhibit No. 1—(Continued)

[119] and any order based on the complaint which adversely affects respondents will be void.

85. The issues in the instant proceeding are substantially identical with the issues in Docket 5132, the so-called "Non-schedules Investigation," presently pending before the Civil Aeronautics Board, to which the respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited are parties; the institution of the instant proceeding at a time when said Docket No. 5132 is pending before two Examiners of the Civil Aeronautics Board for initial decision constitutes a vexatious and oppressive practice by the Board's Office of Compliance and by the Civil Aeronautics Board itself.

86. On information and belief, respondents allege that, in truth and in fact, the allegations contained in the complaint of the Enforcement Attorney herein are not based upon informal investigation by members of the Board's Staff but are based upon testimony and evidence introduced into the proceedings in Docket 5132, the so-called "Non-scheduled Investigation," presently pending before the Civil Aeronautics Board as provided in paragraph 85 hereinabove.

87. Respondents allege that the subject matter of the instant proceeding, and, in addition thereto, the witnesses required and the evidence which must necessarily be introduced therein by both the Compliance Attorney and respondents, are substantially identical with the subject matter, the witnesses and

Exhibit No. 1—(Continued)

the evidence introduced by Bureau Counsel for the Civil Aeronautics Board and by respondents Great Lakes Airlines, Inc. and Currey Air Transport, Limited in Docket 5132, the so-called "Non-scheduled Investigation," presently pending before the Civil Aeronautics Board as provided in paragraph 85 hereinabove.

88. Respondents have complied with all properly [120] applicable statutes, rules, regulations, and orders.

Wherefore, respondents Great Lakes Airlines, Inc.; Currey Air Transport, Limited; Air International, Inc.; Great Lakes Airlines Agency, Inc.; Skycoach Agency of Nevada, Inc.; Skycoach Airlines Agency of New York, Inc.; Skycoach Airlines Agency of Chicago, Inc.; Skycoach Agency of Los Angeles, Inc.; Skycoach Airlines Agency of Newark, Inc.; Super Skycoach Airlines Agency, Inc.; Skycoach Airlines Agency of Boston, Inc.; Skycoach Airlines Agency of Virginia, Inc.; Skycoach Airlines Agency of Milwaukee, Inc.; Skycoach Airlines Agency of Detroit, Inc.; Skycoach Airlines Agency of Washington, Inc.; Skycoach Agency of San Francisco, Inc.; Irving E. Hermann and Ida Mae Hermann, individually and as general partners of the co-partnership Nevada Aero Trades Company; and Nevada Aero Trades Company, a Nevada co-partnership, request that the complaint herein be dismissed and that they be granted such other and further relief as to the Board may appear just and proper. [121]

Exhibit No. 1—(Continued)

Respectfully submitted,

Great Lakes Airlines, Inc.

By /s/ Irving E. Hermann, President

Currey Air Transport, Limited

By /s/ Robert M. Smith, Executive Vice President
Air International, Inc.

By /s/ Ida Mae Hermann, President
Great Lakes Airlines Agency, Inc.

By /s/ Irving E. Hermann, President
Skycoach Agency of Nevada, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Airlines Agency
of New York, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Airlines Agency of Chicago, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Agency of Los Angeles, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Airlines Agency of Newark, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Super Skycoach Airlines Agency, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Airlines Agency of Boston, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Airlines Agency of Virginia, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Airlines Agency
of Milwaukee, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Airlines Agency of Detroit, Inc.

By /s/ Gladys Sheppard, Secretary-Treasurer

Exhibit No. 1—(Continued)

Skycoach Airlines Agency
of Washington, Inc.

- By /s/ Gladys Sheppard, Secretary-Treasurer
Skycoach Agency of San Francisco, Inc.
- By /s/ Gladys Sheppard, Secretary-Treasurer
Nevada Aero Trades Company, a Nevada
Co-partnership
- By /s/ Irving E. Hermann, General Partner
- By /s/ Ida Mae Hermann, General Partner
- /s/ Irving E. Hermann, Individually
- /s/ Ida Mae Hermann, Individually [123]
- Duly Verified. [124-27]
- Certificate of Service attached. [128]
- [Endorsed]: Filed April 6, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF IDA MAE HERMANN in Opposition to Petition to Compel the Attendance as Witnesses of Certain Persons and the Production of Documentary Evidence; Etc.

State of California,
County of Los Angeles—ss.

Ida Mae Hermann, being first duly sworn, deposes and says:

She is one of the Respondents in the within proceeding; she is the Secretary-Treasurer of Great Lakes Airlines, Inc.; she is the President of Air International, Inc.; she is a general partner of Nevada Aero Trades Company. Great Lakes Airlines,

Inc., Nevada Aero Trades Company, and Air International, Inc. are Respondents in the proceeding known as "Civil Aeronautics Board Docket No. 6908."

On or about March 8, 1955, affiant was served with a subpoena issued by Examiner F. Merritt Ruhlen in the proceeding, known as "Docket No. 6908"; said subpoena required affiant, individually, and in her aforesaid capacities with Great Lakes Airlines, Inc., [129] Air International, Inc., and Nevada Aero Trades Company, to produce the documents set forth in the attached pages of the said subpoena, a copy of which is set forth as Exhibit "B" to the Petition of the Civil Aeronautics Board in the within action.

Air International, Inc., does not and did not at the time of the service upon affiant of the subpoena referred to hereinabove, maintain an office or place of business at Lockheed Air Terminal, Burbank, California, and did not at the said times mentioned hereinabove maintain an office or place of business within the State of California or otherwise within the jurisdiction of this Court.

Substantially all of the books and records of Air International, Inc., are kept in the office maintained by Air International, Inc., in the City of Las Vegas, Nevada; Air International, Inc., has appointed an agent for service of process in the City of Las Vegas, Nevada, which said appointment is presently in effect and which agent is now amendable to service of process.

The lands, buildings, and equipment of Great Lakes Airlines, Inc., including all documents, papers and correspondence kept or required to be kept by Great Lakes Airlines, Inc. have been available for inspection and examination by duly authorized representatives of the Civil Aeronautics Board as required by the Civil Aeronautics Act. During the year 1954 and on occasions prior thereto, the said facilities and records of Great Lakes Airlines, Inc. have been inspected by representatives of the Civil Aeronautics Board. The employees, agents and officers of Great Lakes Airlines, Inc. have not impeded nor interfered in any way with the said inspections.

Affiant has read the subpoenas attached to the Petition as Exhibits "B" through "L" and has attempted to determine what would be involved in terms of time and personnel in complying with the said subpoenas insofar as the documents sought relate to those [130] kept by the aforesaid companies and by affiant, personally. It is, of course, extremely difficult to estimate the total effect of complying with these subpoenas. However, it is affiant's best estimate that it will be necessary to search through more than one million documents in order to locate and produce the documents sought.

Affiant recognizes that this estimate may appear to be high to someone who is not familiar with the airline business. However, this is the conclusion that affiant has reached after analysis of the individual provisions of the said subpoenas.

Great Lakes Airlines, Inc. is engaged in airline transportation as a non-scheduled air carrier. The

company also has an extensive maintenance division which performs overhaul and maintenance service for the aircraft owned or operated by the company and by various other companies. Great Lakes Airlines, Inc. has approximately seventy-five (75) employees, although this number varies from time to time depending primarily on the number employed in the maintenance division.

The airline business can best be described as a business in which there is an extremely large gross in relation to the return or profit. The expenses necessarily incurred are extremely high. Documentation involved in carrying on this business is considerable.

It is affiant's best judgment that in connection with every flight performed, some fifty (50) to seventy-five (75) documents are required. In addition to the documents retained by any business which maintains a system of books of account, Great Lakes Airlines, Inc., in its capacity as an air carrier, and in its maintenance capacity, is required to comply with the extensive record keeping and reporting requirements of the Civil Aeronautics Administration and the Civil Aeronautics Board. Copies of many of the documents sought in these subpoenas are kept in the local office [131] of the Civil Aeronautics Administration. These documents are available to the Civil Aeronautics Board. A substantial part of the information sought in the said subpoenas served on affiant is submitted to the Civil Aeronautics Board in regular reports.

The following statements are applicable to the

specific items contained in the subpoena served upon affiant:

(a) This item requires the production of all general ledger and all subsidiaries' books and ledgers and all supporting documents to the entries in said books and ledgers for a period of thirty-eight (38) months. Great Lakes Airlines, Inc. maintains a fairly elaborate system of books. The files contain supporting information for every ticket sold. In addition, there are many records and invoices required in connection with each flight that is operated. It would require a trained person approximately two (2) months to produce the two hundred thousand (200,000) documents to which this item relates. This estimate includes Air International, Inc. and Nevada Aero-Trades Company, as well as Great Lakes Airlines, Inc.

(b) A number of these items, including balance sheet and profit and loss statements, are submitted to the Board by Great Lakes Airlines, Inc. in regular reports.

(d) Affiant has attempted to estimate the number of cancelled checks that would be involved in the case of Great Lakes Airlines, Inc. A recent check shows that Great Lakes Airlines, Inc. issues approximately three hundred (300) checks per month. A conservative estimate of the number of bank statements and cancelled checks required for thirty-eight (38) months for the three (3) companies and affiant is twenty-five thousand (25,000) items.

(h) The experience of Great Lakes Airlines, Inc. is that it issues approximately twenty-five hundred

(2500) tickets per month. This estimate on the basis of twenty-five (25) flights per month with one hundred (100) passengers boarding at originating [132] and intermediate points. This would mean fifteen thousand (15,000) tickets would have to be produced in response to this item during the six (6) month period covered. However, this item calls for tickets actually sold to the public during the months of June and November, in each of three (3) years. The tickets are not filed by date sold, but instead are filed by date of flight. Since many passengers purchase their tickets weeks or months prior to the date of flight, it would be necessary to search through the tickets for two (2) or three (3) months following the months named in the subpoena. I have made reference in my statement concerning this item only to flight coupons, many of which would have to be obtained from the ticket agents of Great Lakes Airlines, Inc., and in many cases from the sub-agents of our ticket agents.

I believe that a trained person would require at least ten (10) weeks to accomplish this task. Even then, there would be no certainty that all of the coupons or even the correct coupons were produced.

(i) Most of the documents sought in this item have been submitted to the Civil Aeronautics Board by Great Lakes Airlines, Inc.

(j) This item requires the production of all correspondence, contracts, agreements and options between the twenty-one (21) companies and individuals therein listed for thirty-eight (38) months. It is impossible to estimate the number of said docu-

ments which might exist, or which might be found to be within the control of Great Lakes Airlines, Inc., Air International, Inc., and Nevada Aero Trades Company, or within the control of affiant, personally. It can only be said that compliance with this demand would require a search of every file cabinet, drawer, basket or other enclosure maintained at the office of these companies or at the personal residence of affiant. While it is virtually impossible to estimate the amount of time that would be required to produce the documents [133] sought in item (j), it can be said that it should be measured in terms of months of searching.

(k) The documents sought in item (k) of the attachment to the said subpoena require the production of all individual personnel and payroll records and vouchers for thirty-eight (38) months. The scope of this item of the subpoena is so sweeping as to defy the imagination as to the quantity or sheer bulk of the documents which must be produced.

(m) and (n) Many of these items were required to be submitted by Great Lakes Airlines, Inc. to representatives of the Civil Aeronautics Board in the proceeding known as "Civil Docket 5132", The Non-Scheduled Airlines Investigation Case in the fall of 1953.

Affiant has also examined the subpoena served on the Respondent, George Patterson, which subpoena is attached to the Petition as Exhibit "H". Item (1) of this subpoena calls for the production of the aircraft maintenance logs for aircraft owned or operated by Great Lakes Airlines, Inc. Most of the

pertinent information contained in the aircraft maintenance logs sought in this subpoena is reported to the Civil Aeronautics Board in the so-called "Quarterly Report". The data found in the aircraft maintenance logs, which is not contained in the so-called "Quarterly Report", pertains to various readings on the instruments found in the aircraft, as well as any condition which may be observed by the crew which pertains to overhaul and maintenance of the aircraft. It is difficult to imagine what relevance this information would have to the issues in this proceeding since there are no charges relating to safety violations.

Affiant would like to make special mention of items (d) and (e) which call for the production of bank statements and cancelled checks and income tax returns of affiant, personally. Affiant does not wish to have her personal financial affairs revealed [134] in a public hearing and she will be greatly damaged and injured in her personal financial affairs and will be caused extreme embarrassment if these documents are produced. The production of these documents relating to the personal financial affairs of affiant will expose these private financial transactions to the public and will cause affiant extensive financial loss and damage.

Affiant has not attempted to estimate the amount of time or the number of personnel or the number of bulk of the documents which are sought in the subpoena served on affiant or upon the other officers and employees and agents of Great Lakes Airlines, Inc. However, the total effect of these subpoenas

would be to deprive Great Lakes Airlines, Inc. of a major part of the books, papers, records and documents needed to conduct its business. The physical job of collecting these various documents is, in the opinion of affiant, staggering. Most of the documents sought have no conceivable relation to the issues in the proceeding, known as "Docket No. 6908".

/s/ IDA MAE HERMANN

Subscribed and sworn to before me this sixth day of April, 1955.

[Seal] /s/ ANNE E. DAVIS,
Notary Public in and for said County of Los Angeles, State of California. [135]

[Endorsed]: Filed April 6, 1955.

[Title of District Court and Cause.]

ORDER STAYING SUBPENAS AND CONTINUING CAUSE

This proceeding having come on regularly for hearing before the Honorable Peirson M. Hall, Judge of the above-entitled court, on the 6th day of April, 1955, on petition of the Civil Aeronautics Board for an Order requiring compliance with administrative subpensas and the Order to Show Cause issued March 29, 1955, and the return thereto, petitioner having been represented by Laughlin E. Waters, United States Attorney, Max F. Deutz and Andrew J. Weisz, Assistant United States Attor-

neys, by Andrew J. Weisz, and Robert Burstein, Compliance Attorney of the Civil Aeronautics Board, and the respondents having been represented by Keatinge, Arnold & Older, by Roland Ginsburg, and the respondent Kelman having been represented additionally by Martin H. Webster, appearing by Melvin S. Spears, and the Court having considered the pleadings and the affidavits and heard the arguments of [138] counsel, and being fully advised in the premises;

It is ordered that the administrative subpoenas appearing as Exhibits B through L and attached to the Petition filed herein are stayed until further Order of this Court, and that the hearing in this matter is to be continued until 2:00 o'clock p.m. on the 18th day of April, 1955, on condition that respondents, Ida Mae Hermann, Irving Hermann, Robert M. Smith, H. C. Richards, George Patterson, and Captain G. D. Thompson, and each of them, make the documents specified in the administrative subpoenas directed to each of them available immediately to the representatives of the Civil Aeronautics Board for examination and copying at the usual places of business of the named respondents, and during usual business hours, other than the documents specified in paragraph (e) of the administrative subpoenas directed to respondents Ida Mae Hermann, Irving Hermann, and Robert M. Smith.

Dated: This 7th day of April, 1955.

/s/ PEIRSON M. HALL,
United States District Judge

Approved as to Form Pursuant to Local Rule 7:

KEATINGE, ARNOLD & OLDER

/s/ By **ROLAND E. GINSBURG** [139]

[Endorsed]: Filed April 7, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF JOSEPH W. STOUT, JR. and

AFFIDAVIT OF JOHN D. PEPPER, JR.

IN SUPPORT OF PETITION [140]

Affidavit of Joseph W. Stout, Jr.

United States of America,

Southern District of California—ss.

Joseph W. Stout, Jr. being duly sworn deposes and says:

That he is an Air Transport Examiner employed by the Civil Aeronautics Board, and since April 7, 1955, has been engaged in the examination of various books, records, accounts, properties, and buildings of Great Lakes Airlines, Inc., Currey Air Transport, Limited, Air International, Inc., Nevada Aero Trades Company, and Great Lakes Airlines Agency, Inc. located at Hangar Number 3, Lockheed Air Terminal, Burbank, California, and at the law office of Richard H. Keatinge, 621 South Spring Street, Los Angeles, California.

At approximately 2:30 p.m. on April 7, 1955, affiant, accompanied by John F. Wright, Joseph A. Hamilton, Jr., George S. Lapham, and John D.

Pepper, Jr., employees of the Civil Aeronautics Board, went to Hangar Number 3 at Lockheed Air Terminal for the purpose of making the examination mentioned herein. The only [141] officer of the respondents at Hangar Number 3 at this time was Ida Mae Hermann. Mrs. Hermann arranged for affiant and the others to have the use of a small office in the hangar.

The following morning at about 10:20 a.m. Mr. Robert W. Smith furnished the Currey Air Transport General Ledger and Subsidiary Ledgers covering the period from May, 1952 through December, 1953, along with certain flight personnel records.

Commencing with Monday, April 11, 1955, various of the records of Currey Air Transport, Great Lakes Airlines, and the other companies were furnished to affiant and the other CAB employees.

During the week of April 11, 1955, correspondence between the respondents, as called for by Paragraph (j) in the subpoenas, were requested. During the afternoon of April 11, 1955, affiant and John F. Wright asked Robert M. Smith, Executive Vice-President of Currey, for such correspondence files, as well as audit reports, bank records, and his certificate for Currey Air Transport stock, and Smith stated that they were in the law office of Richard H. Keatinge, with the exception of audit reports and bank records which were in the office of Brown-Kelman Company.

On the afternoon of April 12, 1955, affiant and Joseph A. Hamilton, Jr. went to the law office of Richard H. Keatinge to inspect the records which

Smith said were there. The minutes of Currey Air Transport and Great Lakes Airlines and the stock book of Currey Air Transport were examined at that time. As to the correspondence, Mr. Keatinge advised affiant and Hamilton that there was no correspondence between the respondents in the Board proceeding because they were "all out there together and transacted business verbally." Mr. Keatinge repeated this the following day at his office to affiant and Mr. Wright.

With the exception of the general and subsidiary ledgers and documents referred to in the Affidavit of John D. Pepper, Jr., [142] dated April 18, 1955, the following items which should have been available for inspection, according to the Order of the Court dated April 7, 1955, have not been produced for examination or copying:

- (a) No correspondence between the respondents as provided for in Paragraph (j) of the subpoenas, although the record in the proceeding already contains some such correspondence.
- (b) Not a single document of Great Lakes Airlines Agency, Inc. as specified in the subpoena directed to Irving E. Hermann was made available. A request for these was made to Irving E. Hermann on April 11, 1955, and was referred by him to his wife, Ida Mae Hermann. Mrs. Hermann advised that most of the Great Lakes Airlines Agency records were lost, but if there were any old ones or any new ones, they would be at the office of Brown-Kelman Company and they would be made available. None, however, were produced.

(c) None of the flight, auditor and agent coupons requested in Paragraph (h) of the subpoenas were made available, nor were the tickets specifically requested by number in Paragraph (o) of the subpoena. As to all these, both Robert M. Smith and Ida Mae Hermann stated that such tickets and coupons were attached to invoices which they prepared and sent to Skycoach, and none of them were retained by either Currey Air Transport or Great Lakes Airlines.

(d) None of the audit reports specified in Paragraph (b) of the subpoenas were made available for inspection with the exception of the 1952 audit of Nevada Aero Trades Company. As to the others, both Mr. Smith and Ida Mae Hermann advised that they were at the office of Brown-Kelman Company.

(e) None of the advertising specified in Paragraphs (f) and (i) of the subpoenas was made available. As to these Mr. Keatinge advised affiant and Mr. Wright that if there were any advertising which affiant and Mr. Wright had not seen, it would be in the office of M. B. Scott. Affiant has examined the record in the Board proceeding Docket 6908 and at page 526 thereof, Jack Barnes, who handled the Skycoach advertising long prior to Milton B. Scott, in answer to a question regarding his loss of the account, said:

"A. This was about June, the end of June, in 1953. Milt Scott came in, and Milt said to me 'Look, I want to take over the whole account'. He said 'I can get it from Hermann and you and I can remain friends.' He said the little bit that you are

getting now doesn't amount to too much and he said 'I would like to run the whole thing.'

I said 'I have no choice, you are with Captain Hermann on the West Coast all the time. You might just as well go ahead.' He had it. It wasn't a question of—

Q. He just took the account away from you, is that your testimony? A. That is right."

(f) The minutes of pilots' meeting which were required by the subpoena to Captain G. D. Thompson were not produced. Affiant, with Joseph A. Hamilton, Jr., asked Robert M. Smith and Captain G. D. Thompson for these minutes on April 12, 1955. Mr. Smith said he knew nothing about them. Captain Thompson [144] stated that he had thrown away his copy of the minutes.

/s/ JOSEPH W. STOUT, JR.

Subscribed and sworn to before me, this 18th day of April, 1955.

[Seal] Clerk, U.S. District Court,
Southern District of California

/s/ By [Illegible],
Deputy [145]

Affidavit of John D. Pepper, Jr.

United States of America,
Southern District of California—ss.

John D. Pepper, Jr., being duly sworn, deposes and says:

That he is an Air Transportation Accountant employed by the Civil Aeronautics Board. As such he has, since April 7, 1955, been engaged in an examination of certain of the books, records and accounts of Currey Air Transport, Limited (Currey) and Great Lakes Airlines, Inc. (Great Lakes) at Hangar Number 3, Lockheed Air Terminal, Burbank, California.

An examination of Account 1240 "Traffic Accounts Receivable" of Currey for the period January 1, 1953 through September 30, 1954, disclosed charges for amounts due in connection with sales made by Currey and other organizations and credits for cash received in settlement of such charges. The following are charges and credits recorded in Currey's Account 1240, broken down from summaries contained in the sales register and cash receipts book. [146]

Calendar Year 1953

Name of Organization	Charges	Credits
Air Coach Transport Ass'n.....	\$ 161,983.79	\$ 116,998.54
Independent Military Air Trans-		
port Ass'n.....	512.65	1,588.68
U. S. Gov't. (Direct Sales		
by Currey)	115,518.75	24,212.10
Agency or Skycoach.....	997,683.65	909,336.74
	\$ 1,275,698.84	1,052,136.06

January 1 to September 30, 1954

Air Coach Transport Ass'n.....	\$ 94,082.25	107,677.46
Independent Military Air Trans-		
port Ass'n.....		
U. S. Gov't. (Direct Sales		
by Currey)	140,841.95	212,090.15
Agency or Skycoach.....	1,208,995.33	970,747.86
	\$ 1,443,919.53	1,290,515.47

The general ledger and books of original entry examined to date do not identify the various Skycoach Agencies which made the sales reflected by the figures opposite "Agency or Skycoach" in the preceding paragraph, nor did an examination of copies of invoices prepared by Currey for the month of May, 1954, disclose the name of the agency billed.

Trial balances of Currey's general ledger at December 31, 1953, and September 30, 1954, show advertising expenses totaling \$2,349.49 covering the period January 1, 1953 through September 30, 1954.

During the examination period, affiant's assistant, David Clamp, under affiant's supervision, made an examination of "Accounts Receivable-Agency" of Great Lakes for the fiscal year, September 1, 1953, through August 31, 1954, which disclosed charges for amounts due in connection with sales made by Great Lakes and other organizations, and credits for cash received in settlement for such charges. [147] The following are charges and credits recorded in "Accounts Receivable-Agency", broken down from summaries contained in the "Flite" journal and cash receipts book.

September 1, 1953 to September 30, 1954

Name of Organization	Charges	Credits
Air Coach Transport Ass'n.....	\$ 111,712.17	\$ 87,849.31
U. S. Gov't. (Direct Sales by Great Lakes).....	104,229.65	51,024.96
Agency or Skycoach.....	998,868.62	1,101,040.36
	<hr/>	<hr/>
	\$ 1,214,810.44	1,239,914.63

The general ledger and books of original entry examined to date do not identify the various skycoach agencies which made the sales reflected by the figures opposite "Agency or Skycoach" in the preceding paragraph.

A trial balance of Great Lakes general ledger at August 31, 1954, shows advertising expenses totaling \$7,146.84 for period of fiscal year beginning September 1, 1953 and ending August 31, 1954.

On Wednesday afternoon, April 13, 1955, Ida Mae Hermann delivered to the affiant the general ledgers and some subsidiary records of Air International, Inc. and Nevada Aero Trades Company. At the time of delivery, Mrs. Hermann stated that she could leave the books with affiant for only about an hour as they were needed. Affiant and his assistant, David Clamp, had an opportunity merely to scan the books. After approximately an hour, the books were returned to Mrs. Hermann.

Expense account examined disclosed charges by both Currey and Great Lakes to Brown-Kelman Co. for auditing and accounting services. Affiant was not shown for his examination any audit work papers, financial statements or other documents prepared by Brown-Kelman Co. with the exception of the 1952 financial statement of Nevada Aero Trades Company. [148]

Currey's books show the following payments to Brown-Kelman Co. for auditing and accounting services for the period January 1, 1953 through September 30, 1954:

October, 1953	\$ 70.00
May, 1954	117.00
July, 1954	240.00
August, 1954	70.00
	<hr/>
	\$497.00

Great Lakes' books show the following payments to Brown-Kelman Co. for auditing and accounting services for the fiscal year beginning September 1, 1953 and ending August 31, 1954:

September, 1953	\$ 80.00
March, 1954	463.00
May, 1954	732.23
August, 1954	39.00
	<hr/>
	\$1314.23

/s/ JOHN D. PEPPER, JR.

Subscribed and sworn to before me this 18th day of April, 1955.

[Seal] Clerk, U.S. District Court,
Southern District of California

/s/ By [Illegible],
Deputy

[149]

Acknowledgment of Service attached.

[150]

[Endorsed]: Filed April 18, 1955.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: April 18, 1955; at Los Angeles, Calif.

Present: Hon. Peirson M. Hall, District Judge;
Deputy Clerk: S. W. Stacey; Reporter: A. H.
Wahlberg; Counsel for Petitioner: Andrew J.
Weisz, Ass't U. S. Att'y; Counsel for Respondents:
Roland E. Ginsburg and Richard Keatinge.

Proceedings: For further hearing on order to
show cause.

It Is Ordered that petition is granted and that
respondents answer subpoena; counsel for peti-
tioner to draw written order.

EDMUND L. SMITH,
Clerk

/s/ By S. W. STACEY,
Deputy Clerk

[154]

[Title of District Court and Cause.]

ORDER ENFORCING SUBPENAS

This proceeding having come on regularly for
hearing before the Honorable Peirson M. Hall,
Judge of the above-entitled Court, on the 18th day
of April, 1955, on Petition of the Civil Aeronautics
Board for an Order requiring compliance with ad-
ministrative subpoenas and the Order to Show Cause
issued March 29, 1955, and the return thereto, peti-
tioner having been represented by Laughlin E.
Waters, United States Attorney, Max F. Deutz and

Andrew J. Weisz, Assistant United States Attorneys, by Andrew J. Weisz, and Robert Burstein, Compliance Attorney of the Civil Aeronautics Board, and the respondents having been represented by Keatinge, Arnold & Older, by Roland Ginsburg, and the respondent Kelman having been represented additionally by Martin H. Webster, appearing by Melvin S. Spears; and the Court having considered the pleadings and the affidavits filed by the parties, and having heard the arguments of counsel, [160] and being fully advised in the premises;

It is Ordered that respondents H. C. Richards, George Patterson, and Captain G. D. Thompson, and each of them, comply with the administrative subpoenas heretofore served upon each of them and attached as Exhibits G, H, and L respectively, to the Petition of the Civil Aeronautics Board filed in this proceeding, by appearing before the Honorable F. Merritt Ruhlen, Hearing Examiner of the Civil Aeronautics Board, at Room 229, United States Post Office and Court House, 354 North Spring Street, Los Angeles, California, at 10:00 a.m. on the 2nd day of May, 1955, and bringing with them the documents specified in the said subpoenas.

It Is Further Ordered that respondents Orville Kelman, Harold Shein and M. B. Scott, and each of them, comply with the administrative subpoenas heretofore served upon each of them, and attached as Exhibits K, F, and E, respectively, to the Petition of the Civil Aeronautics Board filed in this proceeding, by appearing before the Honorable F. Merritt Ruhlen, Hearing Examiner of the Civil

Aeronautics Board, at Room 229, United States Post Office and Court House, 354 North Spring Street, Los Angeles, California, at 10:00 a.m. on the 3rd day of May, 1955, and bringing with them the documents specified in the said subpenas.

It Is Further Ordered that Robert M. Smith, Ida Mae Hermann and Irving Hermann, and each of them, comply with the administrative subpenas heretofore served upon each of them, and attached as Exhibit D, B and C, respectively, of the Petition of the Civil Aeronautics Board filed in this proceeding, by appearing before the Honorable F. Merritt Ruhlen, Hearing Examiner of the Civil Aeronautics Board, at Room 229, United States Post Office and Court House, 354 North Spring Street, Los Angeles, California, at 10:00 a.m. on the 4th day of May, 1955, and bringing with them the documents specified in the said subpenas. [161]

It Is Further Ordered that the respondent Leonard Rosen comply with the administrative subpoena hereofore served upon him by appearing before the Honorable F. Merritt Ruhlen, Hearing Examiner of the Civil Aeronautics Board, at Room 229, United States Post Office and Court House, 354 North Spring Street, Los Angeles, California, at 10:00 a.m. on the 4th day of May, 1955, but the said respondent Leonard Rosen need not comply with those provisions of the administrative subpoena heretofore served upon him, and appearing as Exhibit I of the Petition of the Civil Aeronautics Board in this proceeding, which directs the said

respondent Rosen to bring with him any certain documents.

Dated: This 29 day of April, 1955.

/s/ PEIRSON-M. HALE,

United States District Judge [162]

Acknowledgment of Service attached. [163]

[Endorsed]: Lodged April 19, 1955.

[Endorsed]: Judgment Entered April 29, 1955,
and Filed April 26, 1955.

[Title of District Court and Cause.]

**AFFIDAVITS OF IDA MAE HERMANN AND
ROBERT M. SMITH IN SUPPORT OF
PETITION FOR REHEARING AND MO-
TION FOR NEW TRIAL**

Affidavit of Ida Mae Hermann

State of California,

County of Los Angeles—ss.

Ida Mae Hermann, being first duly sworn, de-
poses and says:

She is a Respondent in the within proceeding;
she is Secretary-Treasurer of Great Lakes Airlines,
Inc.; she is President of Air International, Inc.;
she is Secretary-Treasurer of Great Lakes Airlines
Agency, Inc.; she is a general partner of Nevada
Aero Trades Company.

She has read the Affidavits of Joseph W. Stout,
Jr. and John D. Pepper, Jr., and states that the
said Affidavits present a distorted and misleading

picture of the manner in which affiant has complied with the inspection Order of this Court.

To the best of affiant's knowledge, all of the documents within the possession and control of affiant, which were called for in the administrative subpoena served upon affiant, were made available for inspection by representatives of the Civil Aeronautics Board. [168]

That the following steps were taken by affiant with respect to the specific groups of documents requested by representatives of the Civil Aeronautics Board:

1. Correspondence Between Respondents.

Affiant made available to the Civil Aeronautics Board representatives all of the records and files of Great Lakes Airlines, Inc., Great Lakes Airlines Agency, Inc., Air International, Inc. and Nevada Aero Trades Company, which were within the possession and control of affiant and were located at Lockheed Air Terminal, Burbank, California. Most of the records maintained by these Companies are located at Lockheed Air Terminal. However, some of the records of Air International, Inc. and Nevada Aero Trades Company are located in Las Vegas, Nevada.

To the best of affiant's knowledge, the records and files turned over to the Civil Aeronautics Board contained the correspondence of the named Companies. These records were delivered to representatives of the Civil Aeronautics Board for inspection without any limitation or restriction as to the manner in which the said records would be inspected.

Affiant cannot state categorically that the records of Air International, Inc. and Nevada Aero Trades Company maintained in Las Vegas, Nevada, do not contain correspondence between the Respondents in the administrative proceeding. However, affiant has no knowledge of any such correspondence between Respondents in the administrative proceeding which is contained in the said records maintained in Las Vegas. Affiant is willing to make these records available for inspection by the Civil Aeronautics Board if directed or requested to do so by [169] this Court.

2. The Records of Great Lakes Airlines Agency, Inc.

Most of the records of Great Lakes Airlines Agency, Inc. were either lost or stolen in 1953, prior to the time affiant testified about the disappearance of these records, in the proceeding known as Civil Aeronautics Board, Docket No. 5132, the so-called "Non-Scheduled Investigation Case", beginning on November 11, 1953. Affiant was cross-examined at some length with respect to the disappearance of these records and the representatives of the Civil Aeronautics Board should be familiar with this subject. Affiant specifically brought this and other matters relating to the records of Great Lakes Airlines Agency, Inc. to the attention of Joseph Hamilton during the course of the inspection ordered by this Court.

Affiant told Hamilton that Orville Kelman, of Brown-Kelman & Co., Auditors and Accountants for all of these Companies, might conceivably have

some later records of Great Lakes Airlines Agency, Inc. in his possession. Affiant agreed to and did try to obtain any and all such records from Orville Kelman. However, Kelman was in New York City until April 12 or 13, 1955. When contacted by affiant, Kelman stated that he would attempt to locate these and any other records, which conceivably might be in his possession, after April 15, 1955, the deadline for filing income tax returns because all of Kelman's time was devoted to completing said tax returns. Affiant had previously been informed by Mr. Pepper that the inspection period was ten (10) days.

3. Flight, Auditor and Agent Coupons.

Great Lakes Airlines, Inc., does not have within [170] its possession or control the flight, auditor or agent coupons requested in paragraphs (h) and (o) of the Subpoena served upon affiant. The agent and auditor coupons are retained by the ticket agency which sells the ticket. The tickets of Great Lakes Airlines, Inc. are sold by ticket agencies, and not by the Company, itself. The flight coupons are attached to the billing of Great Lakes Airlines, Inc. to its ticket agencies as proof that the particular passengers were transported by Great Lakes Airlines, Inc. The flight coupon is then retained by the ticket agency.

Affiant brought the above facts to the attention of Joseph Hamilton. Affiant also asked Hamilton if he would advise affiant what information was desired from these tickets since this same information might be available from other records maintained.

by Great Lakes Airlines, Inc. Mr. Hamilton made no reply to this suggestion of affiant.

4. Advertising Matter; Items (f) and (i).

It is true, as stated in the Pepper Affidavit, that the general ledger of Great Lakes Airlines, Inc. shows advertising expenses of \$7,146.84 for the fiscal year ended August 31, 1954. A check of the readily available supporting documents by affiant shows that the advertising expenditures in the amount of \$7,146.84 for the fiscal year ended August 31, 1954, consisted of directory advertising in telephone books, except for an expenditure in the approximate sum of \$7.00 for a listing in some other type of directory.

In discussing advertising materials with Mr. Hamilton, affiant stated that, to the best of her knowledge, all of the advertising of Great Lakes Airlines, Inc., [171] consisted of telephone directory advertising, other than the advertising of its Maintenance Division. Affiant also advised Mr. Hamilton that copies or photographs of telephone directory advertising are filed with the Civil Aeronautics Board along with the regular quarterly flight reports of Great Lakes Airlines, Inc. This directory advertising is, therefore, available to these representatives of the Civil Aeronautics Board and to the best of affiant's knowledge, there are no copies of additional photographs of directory advertisements within the possession or control of affiant. Affiant would have to obtain the directory advertising from the telephone books in the same fashion

that the representatives of the Civil Aeronautics Board could obtain it.

Affiant advised Mr. Hamilton that the Maintenance Division of Great Lakes Airlines, Inc. sent out lists of parts and equipment for sale. Affiant then asked Mr. Hamilton if these lists would be included within the scope of the Subpoena and he indicated that the Civil Aeronautics Board had no interest in inspecting these lists.

To the best of affiant's knowledge, Great Lakes Airlines, Inc. has not issued any hand-cards, brochures, or schedules, nor has Great Lakes Airlines, Inc. advertised in newspapers or magazines, or over the radio.

5. Audit Reports.

Affiant has no knowledge of any audit reports of Great Lakes Airlines, Inc., other than the Profit and Loss Statements and Balance Sheets, which are a part of the regular quarterly reports filed with the Civil Aeronautics Board. Copies of these quarterly reports were made available to the representatives of the Civil Aeronautics [172] Board. Affiant advised these representatives that there may be other financial statements for the Maintenance Division of Great Lakes Airlines, Inc., which she could not locate, and that she would try to secure copies from Mr. Orville Kelman. However, these representatives stated that they were not particularly interested in the financial records of the Maintenance Division, but were primarily interested in financial records pertaining to flight operations.

6. General Ledgers and Subsidiary Records of

Air International, Inc. and Nevada Aero Trades Company.

The Pepper Affidavit states that affiant left these books with him for approximately an hour. Affiant made the financial records and books of accounts of Great Lakes Airlines, Inc., as well as those of Air International, Inc. and Nevada Aero Trades Company, available to the Civil Aeronautics Board representatives. Affiant advised Mr. Pepper that the auditors were trying to close the books of Nevada Aero Trades Company by April 15, 1955, since it is a partnership and the personal tax returns of affiant and her husband could not be completed and filed by April 15, 1955, unless the books of Nevada Aero Trades Company were closed. Affiant also told Mr. Pepper that their auditor was cross-checking and balancing accounts of Great Lakes Airlines, Inc., Air International, Inc., and Nevada Aero Trades Company, and had need of these records. Affiant stated that Mr. Pepper could have these records for two or three hours. When affiant returned for the records of Air International, Inc. and Nevada Aero Trades Company, approximately two hours later, the Civil Aeronautics Board auditors had set them aside and were no longer using them. Mr. Pepper told affiant that he had [173] gone through them and would return to these books at a later time.

Affiant told Mr. Pepper that these records would be available to him upon request if he needed them again. These records were then used by affiant's auditor who was located in the same hangar as the

Civil Aeronautics Board auditors. The Civil Aeronautics Board auditors did not request these documents again, although they were available for their inspection at all times thereafter.

Mr. Pepper has stated in his Affidavit that the general ledger and books of original entry of Great Lakes Airlines, Inc. do not identify the agency which sold the tickets. This information may be obtained from supporting documents which are and were available for inspection by the Civil Aeronautics Board representatives. The Civil Aeronautics Board representatives did not ask affiant to produce these particular supporting documents.

Affiant also requested that in view of the approaching deadline for filing the personal income tax returns on April 15, 1955, the Civil Aeronautics Board auditors first examine the financial records beginning in 1952, so that the current financial records would be available to affiant's auditor for the purpose of preparing her personal income tax return, as well as balancing and cross-checking accounts with the various Companies. The Civil Aeronautics Board auditors declined to do this and indicated that there was so much material to be inspected that they would never get back to the earlier years and were more interested in the current records.

Affiant spent so much time answering the questions of the Civil Aeronautics Board representatives and producing the requested documents for inspection that affiant was unable to complete [174] her personal income tax return and had to request

an extension of time to file her tax return on Friday, April 15, 1955.

/s/ IDA MAE HERMANN

Subscribed and Sworn to before me this 25th day of April, 1955.

[Seal] /s/ ROLAND E. GINSBURG,
Notary Public in and for said County of Los Angeles, State of California. [175]

Affidavit of Robert M. Smith

State of California,
County of Los Angeles—ss.

• Robert M. Smith, being first duly sworn, deposes and says:

He is one of the Respondents in this proceeding; he is the Executive Vice President of Currey Air Transport Limited;

He is familiar with the inspection order of this Court entered on April 7, 1955, insofar as the said order relates to the books, papers, records and documents of Currey Air Transport Limited and to the books, papers, records and documents of affiant.

Affiant states that he has done all that it is physically possible for affiant to do to comply with the said inspection order of this Court.

Joseph W. Stout, Jr., made the following statement at page 2 of his affidavit filed in this proceeding:

"During the afternoon of April 11, 1955 affiant

[Stout] and John F. Wright asked Robert M. Smith, Executive Vice President of Currey, for such correspondence files, as well as audit reports, [176] bank records, and his certificate for Currey Air Transport stock, and Smith stated that they were in the law office of Richard H. Keatinge, with the exception of audit reports and bank records, which were in the office of Brown-Kelman Company."

Stout did request affiant to produce the aforementioned documents. In response thereto, affiant said and did the following:

(1) Correspondence files of Currey. Affiant delivered the entire correspondence file maintained by Currey at Lockheed Air Terminal, which file contains all of the correspondence of Currey within the control of affiant. Affiant did not go through this file himself, but instead permitted representatives of the Civil Aeronautics Board to go through the file and select such documents for inspection as they desired in their absolute discretion.

Affiant did not state to Joseph Stout or to J. F. Wright that the correspondence files of Currey were in the office of Richard H. Keatinge; affiant stated to Stout and Wright that the minute book and stock records of Currey were maintained in the office of Richard H. Keatinge, which they are; affiant further stated that correspondence between respondents relating to legal matters, such as leases and agreements, together with such leases and agreements, would be in the office of Richard H. Keatinge if such particular correspondence existed.

(2) Audit reports and bank records. Affiant did not make the statement attributed to him by Stout that the Brown-Kelman Company had the Currey audit reports; affiant did state to Stout that affiant would have to check with the Brown-Kelman Company to determine the whereabouts of the Currey audit reports; affiant was informed that the only audit reports of Currey consisted of quarterly balance sheets and profit and loss statements; copies of these quarterly balance sheets and profit and loss statements were then made available to representatives of the Civil Aeronautics Board for inspection; these quarterly balance sheets and profit [177] and loss statements are required to be filed with the Civil Aeronautics Board and are so filed as part of Currey's regular quarterly reports.

Affiant did not state to Stout that the bank records of Currey were in the office of Brown-Kelman Company; affiant stated to Stout that he would check with the Brown-Kelman Company to determine where the bank records were located; affiant located all of the bank records of Currey and delivered the said bank records to the representatives of the Civil Aeronautics Board for inspection.

(3) Affiant's certificate of Currey stock. Affiant stated that his certificate of Currey stock might be in the office of Richard H. Keatinge; when affiant was thereafter advised that the certificate was not in the office of Richard H. Keatinge, affiant exerted all possible efforts to locate the said stock certificate, including a search of affiant's personal papers; affiant was unable to locate the stock certificate.

(4) Flight, auditor and agent coupons. Stout's affidavit contains the statement, on page 3 that none of the flight, auditor and agent coupons requested in paragraphs (h) and (o) of the subpoena were made available for inspection. None of the flight, auditor or agent coupons requested in the subpoena are within the possession or control of Currey or of affiant. Currey sells no tickets to the public. Tickets are sold by ticket agencies which retain the agent and auditor coupons when the said tickets are sold. After the passenger is carried by Currey, the flight coupon is attached to Currey's billing to the ticket agencies to substantiate the fact that the passenger was carried. The flight coupons are then retained by the said ticket agencies and therefore are not within the possession or control of Currey or of affiant, and could not be produced for inspection, or in response to a subpoena.

A small office in the hangar was made available to the C.A.B. [178] representatives as stated at page 2 of the Stout affidavit. The various files and file drawers were delivered to the said representatives in this office. During the inspection period, affiant asked the C.A.B. representatives on several occasions whether this office was satisfactory for their purposes, or whether they preferred to carry out their inspection in the various offices where the files were located. Affiant was advised by the C.A.B. representatives that this office was satisfactory and that they did not desire to use the offices where the records were maintained. This office was locked each evening during the inspection, so that the rep-

resentatives of the Civil Aeronautics Board could leave their equipment and records in this office and need not carry them back and forth each day.

Affiant made himself available to assist the representatives of the Civil Aeronautics Board in making their inspection. On many occasions during the week of April 11, 1955, affiant asked John D. Pepper Jr., whether he had sufficient documents for his purposes. On occasions, Pepper asked affiant for particular documents, and affiant exerted all possible efforts to find them. On most occasions, Pepper advised affiant that he had sufficient documents to keep his staff busy.

Stout has stated in his affidavit that affiant furnished the Currey general ledger and subsidiary ledgers for the period May, 1952, through December, 1953, on Friday, April 8, 1955. Stout does not mention this, but affiant also furnished the Currey general and subsidiary ledgers for the year 1954 on Monday, April 11, 1955.

The Pepper affidavit states, on page 2, that: "Trial balances of Currey's general ledger at December 31, 1953, and September 30, 1954, show advertising expenses totaling \$2,349.49 covering the period January 1, 1953 through September 30, 1954." The trial balances referred to do not reflect any advertising expenditures. [179] This could have been determined by the Civil Aeronautics Board auditors by checking the supporting documents which were available for inspection. Pepper had reference to the 1953 general ledger, which shows expenses in the amount of \$833.49 under "Other pro-

motional and entertainment expense" and to the 1954 general ledger, which shows "advertising and promotion expense" in the amount of \$1516.00.

On several occasions, Stout and Joseph Hamilton asked affiant's permission to open up and examine certain file drawers which contained records and documents of Currey. Affiant told Stout and Hamilton, on April 11 or April 12, 1955, that they could inspect anything they wished in that office, and that all the records of Currey within the control of affiant were at their disposal. Affiant thereupon departed from the office and left Hamilton and Stout there to continue their inspection. To the best of affiant's recollection, Stout and Hamilton spent the remainder of the afternoon in this office, and Hamilton spent part of the following day in this office examining the various records and documents of Currey.

To the best of affiant's knowledge, the Civil Aeronautics Board representatives discontinued their inspection and left the premises no later than five o'clock each evening during the inspection.

/s/ ROBERT M. SMITH

Subscribed and sworn to before me this 27th day of April, 1955.

[Seal] /s/ ROLAND E. GINSBURG,

Notary Public in and for said
County and State [180]

[Endorsed]: Filed April 29, 1955.

[Title of District Court and Cause.]

MEMORANDUM FOR ORDER

In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all of the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings.

The subpoenas were spaced for the 9th of March, the 10th of March, the 14th of March, and the 15th of March, apparently with the intention that they should not be burdensome in the sense that all of the records called for in the various subpoenas would be taken from the respondents so as to prevent them having access to them for the purpose of conducting day to day business. [212]

Accordingly, the Motion for Stay of Order and for Re-hearing is denied; The original order for enforcement and inspection is vacated, and the Petitioners will be entitled to an order for the enforcement of the subpoenas as issued, except that they should be modified to allow a sufficient length of time between dates for the production of the documents called for in each subpoena so that the respondents will not be deprived of all of their books and records at the same time.

Petitioners will prepare and submit an order in accordance with the foregoing.

Dated: Los Angeles, California, this 12th day of May, 1955.

/s/ **PEIRSON M. HALL,**
United States District Judge [213]

[Endorsed]: Filed May 12, 1955.

In the United States District Court for the Southern District of California, Central Division

Civil No. 18031-PH

In the Matter of the Petition of the CIVIL AERONAUTICS BOARD for an Order Requiring IDA MAE HERMANN, et al., to Comply with Subpenas Issued by a Hearing Examiner of the Civil Aeronautics Board.

ORDER ENFORCING SUBPENAS

This proceeding having come on regularly before the Honorable Peirson M. Hall, Judge of the above-entitled Court, on the Petition of the Civil Aeronautics Board for an Order requiring compliance with the subpenas on April 6, 7, and 18, 1955; and the Court having issued its Order Enforcing Subpenas on April 29, 1955; and the respondents having filed a Petition for Rehearing and Motion for New Trial on April 29, 1955, and the Court having stayed enforcement of its Order of April 29, 1955; and the Petition for Rehearing and Motion for New Trial having been heard on May 9, 1955; and the Court having, on May 12, 1955, denied the Petition for Rehearing and Motion for New Trial, and va-

cated the Order of April 29, 1955; and being fully advised in the premises.

It Is Ordered that the following named respondents, and each of them, comply with the administrative subpoenas heretofore [214] served upon each of them, which subpoenas are attached as Exhibits to the Petition of the Civil Aeronautics Board filed in this proceeding as shown in the table below, by appearing before the Honorable F. Merritt Ruhlen, Hearing Examiner of the Civil Aeronautics Board, at Room 229, United States Post Office and Court House, 312 North Spring Street, Los Angeles, California, at 10:00 a.m. on the date indicated in the table below, and bringing with them the documents specified in the said subpoenas:

Respondent	Date	Exhibit Designation
H.C. Richards	May 31, 1955	G
George Patterson	May 31, 1955	H
Captain G. D. Thompson	June 1, 1955	L
Harold Shein	June 2, 1955	F
Orville Kelman	June 2, 1955	K
M. B. Scott	June 6, 1955	E
Robert M. Smith	June 7, 1955	D
Ida Mae Hermann	June 9, 1955	B
Irving Hermann	June 14, 1955	C

It Is Further Ordered that the respondent, Leonard Rosen, comply with the administrative subpoena heretofore served upon him by appearing before the Honorable F. Merritt Ruhlen, Hearing Examiner of the Civil Aeronautics Board, at Room 229, United States Post Office and Court House,

312 North Spring Street, Los Angeles, California, at 10:00 a.m. on the first day of June, 1955, but the said respondent, Leonard Rosen, need not comply with those provisions of the administrative subpoena heretofore served upon him and appearing as Exhibit I of the Petition of the Civil Aeronautics Board filed in this proceeding, which required the said respondent, Leonard Rosen, [215] to bring with him documents.

Dated: This 16th day of May, 1955.

/s/ PEIRSON M. HALL,
United States District Judge

Receipt of copy of within proposed order on May 13, 1955, at 2:45 p.m. acknowledged. Proposed order disapproved as to form and substance.

KEATINGE, ARNOLD & OLDER,
/s/ By ROLAND E. GINSBURG,
Attorneys for Respondents [216]

[Endorsed]: Lodged May 13, 1955.

[Endorsed]: Filed May 16, 1955.

[Endorsed]: Judgment Docketed and Entered
May 17, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Ida Mae Hermann, Irving E. Hermann, Robert M. Smith, M. B. Scott, Harold Shein, H. C. Richards, George Patterson,

Leonard Roser, Orville Kelman, and Captain G. D. Thompson, Respondents in the within action, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order Enforcing Subpoenas entered in this action on May 17, 1955.

Dated: May 17, 1955.

KEATINGE, ARNOLD & OLDER,
/s/ By ROLAND E. GINSBURG,
Attorneys for Respondents [217]

[Endorsed]: Filed May 19, 1955.

[Title of District Court and Cause.]

MOTION FOR STAY PENDING APPEAL OR,
IN THE ALTERNATIVE, FOR STAY
PENDING DETERMINATION BY THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT OF MOTION
FOR STAY PENDING APPEAL

Respondents, Ida Mae Hermann, Irving E. Hermann, Robert M. Smith, M. B. Scott, Harold Shein, H. C. Richards, George Patterson, Leonard Rosen, Orville Kelman, and Captain G. D. Thompson, move the Court, pursuant to Rule 62(a), (d), and (g), and Rule 81(a)(3), of the Federal Rules of Civil Procedure, for an Order staying any proceeding or proceedings to enforce the Judgment entered in favor of the Civil Aeronautics Board, Petitioner, and against the aforesaid Respondents in the above entitled cause, on May 17, 1955, pending determination of a timely appeal to the United States Court

of Appeals for the Ninth Circuit or, in the alternative, pending determination by the United States Court of Appeals for the Ninth Circuit of a timely motion for an Order staying any proceeding or proceedings to enforce the said Judgment.

In support of the within motion, Respondents respectfully show the Court as follows: [220]

I.

On May 17, 1955, this Court entered its Order enforcing each of the administrative Subpoenas at issue in this proceeding.

II.

The said Order entered on May 17, 1955, provides that the Respondents herein shall appear before a Hearing Examiner of the Petitioner and produce the documents described in their respective Subpoenas on the following dates:

Respondent	Date
H. C. Richards	May 31, 1955
George Patterson	May 31, 1955
Captain G. D. Thompson	June 1, 1955
Harold Shein	June 2, 1955
Orville Kelman	June 2, 1955
M. B. Scott	June 6, 1955
Robert M. Smith	June 7, 1955
Ida Mae Hermann	June 9, 1955
Irving E. Hermann	June 14, 1955

Respondent, Leonard Rosen, is required to appear before a Hearing Examiner of the Petitioner

on June 1, 1955, but said Respondent need not bring with him the documents described in the administrative Subpoena served upon said Respondent.

III.

It has been and is alleged that the documents described in the said administrative Subpoenas constitute substantially all of the business records of Great Lakes Airlines, Inc. and Currey, Air Transport Limited, Respondents in the administrative proceeding, known as Civil Aeronautics Board Docket No. 6908.

IV.

The uncontradicted Affidavit of Respondent, Ida Mae Hermann, states that many of the said books, papers, records and documents described in the administrative Subpoenas enforced by this Court, [221] or copies or photographs thereof, are presently in the possession of the Civil Aeronautics Board and need not be produced by Respondents.

V.

The Federal Rules of Civil Procedure apply to this proceeding and to any appeal from a Judgment or Order entered herein. Rule 81(a)(3) provides in part there:

"These rules apply (1) to proceedings to compel the giving of testimony or production of documents in accordance with a Subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by

order of the court in the proceedings, and (2) to appeals in such proceedings."

VI.

No statute provides that the Federal Rules of Civil Procedure shall not apply to this proceeding, nor do the local rules of this Court so provide. This Court has not ordered that the Federal Rules of Civil Procedure shall not apply to these proceedings. Rule 81(a)(3) quoted hereinabove, explicitly provides that the Federal Rules of Civil Procedure shall apply to an appeal in this proceeding, any Order of this Court in this proceeding to the contrary notwithstanding.

VII.

The said Respondents have prepared a Notice of Appeal which will be filed forthwith upon determination by this Court of the within motion. The said Notice of Appeal has not been filed so that this Court will retain jurisdiction of this proceeding pending determination of the within motion.

VIII.

Since Rule 81(a)(3) above quoted provides for an appeal in this proceeding, it necessarily follows that the purport of this Rule is to authorize an effective appeal, one in which the issues have not [222] been rendered moot prior to or during the pendency of an appeal.

IX.

Rule 62(d) of the Federal Rules of Civil Procedure provides for a stay upon appeal except in

the case of "an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal." (Rule 62(a)).

X.

Rule 62(g) provides as follows:

"(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered."

XI.

The obvious purpose of the above quoted rules is to reserve issues pending appeal, with certain listed exceptions which have no application here, and not to permit issues to be rendered moot prior to or during the pendency of a timely appeal. Since this proceeding does not come within the specific exceptions set forth, in Rule 62(a), Respondents are entitled to the preservation of these issues by Rule 62(g) and the judgment should be stayed pending determination of these issues by the United States Court of Appeals for the Ninth Circuit.

XII.

If the within motion is not granted by this Court, the Respondents will be required to produce the documents described in [223] their respective Subpoenas in pain of being held in contempt by this Court and said Respondents and said Great Lakes Airlines, Inc. and Currey Air Transport Limited will suffer irreparable injury, loss and damages, and the said issues will become moot prior to consideration thereof upon appeal by United States Court of Appeals for the Ninth Circuit.

The papers on which this motion is based are as follows:

1. All the pleadings and papers on file in the within action;
2. The minutes of the Court, including the Reporter's transcript of the proceedings.

Dated: May 17, 1955.

KEATINGE, ARNOLD & OLDER,
/s/ By ROLAND E. GINSBURG,
Attorneys for Respondents [224]

[Endorsed]: Filed May 19, 1955.

[Title of District Court and Cause.]

**STIPULATION RE MOTION FOR STAY
ON APPEAL**

It Is Stipulated by and between the parties here-to, through their respective counsel, that the attached Motion of respondents for stay pending appeal or, in the alternative, for stay pending de-

termination of the United States Court of Appeals for the Ninth Circuit of Motion for stay pending appeal, may be filed, and the Motion heard and decided forthwith on the attached motion papers and the files of this action without further notice, appearance, argument or other proceedings.

Dated: This 18th day of May, 1955.

KEATINGE, ARNOLD & OLDER,

/s/ By ROLAND E. GINSBURG,

Attorneys for Respondents

[225]

LAUGHLIN E. WATERS,

United States Attorney

MAX F. DEUTZ and

ANDREW J. WEISZ,

Assistant United States Attorneys

ROBERT BURSTEIN,

Compliance Attorney Civil Aero-

nautics Board

/s/ ANDREW J. WEISZ,

Assistant U. S. Attorney

Attorneys for Petitioner

It Is So Ordered this 18 day of May, 1955.

/s/ PEIRSON M. HALL,

United States District Judge [226]

[Endorsed]: Filed May 19, 1955.

[Title of District Court and Cause.]

**ORDER STAYING ORDER ENFORCING
SUBPENAS**

This matter having come on for hearing on Motion of the respondents for a stay pending appeal, or in the alternative, for a stay pending determination of a Motion for a stay pending appeal by the United States Court of Appeals for the Ninth Circuit, the parties having heretofore stipulated that the matter was to be heard and decided by this Court upon the written Motion of respondents filed herein and the files of the action, and being fully advised in the premises;

It Is Ordered that enforcement of the Order Enforcing Subpenas in the above-entitled proceeding filed May 16, 1955, be, and it hereby is, stayed pending determination by the United States Court of Appeals for the Ninth Circuit of a Motion for stay pending appeal to be filed in that Court on condition that notice of appeal be forthwith filed and that Motion for stay [227] be promptly made and prosecuted in the Court of Appeals for the Ninth Circuit.

Dated: This 18 day of May, 1955.

/s/ PEIRSON M. HALL,

United States District Judge

Approved as to Form under Local Rule 7.

Laughlin E. Waters, United States Attorney
Max F. Deutz and Andrew J. Weisz, Assistant
U. S. Attorneys

Robert Burstein, Compliance Attorney Civil
Aeronautics Board

/s/ Andrew J. Weisz, Assistant U. S. Attorney
Attorneys for Petitioner.
Keatinge, Arnold & Older,
/s/ Roland E. Ginsburg,
Attorneys for Respondents.

[228]

[Endorsed]: Filed May 19, 1955.

[Title of District Court and Cause.]

**STIPULATION OF RECORD FOR HEARING
OF MOTION OF RESPONDENTS FOR
STAY PENDING APPEAL AND DESIG-
NATION OF RECORD ON APPEAL**

Whereas, the Court issued its Order enforcing Subpoenas which said Order was docketed and entered on May 17, 1955; and

Whereas, Respondents filed their Notice of Appeal from said Order on May 19, 1955; and

Whereas, this Court issued its Order staying Order enforcing Subpoenas on May 18, 1955, which said Order was filed on May 19, 1955; and

Whereas, Respondents contemplate that the motion of Respondents for stay pending appeal will be noticed to be heard by the United States Court of Appeals for the Ninth Circuit on May 31, 1955;

It Is Stipulated by and between the parties hereto through their respective counsel that the following documents contained in the records and files of this proceeding are designated as the record on

appeal and may be certified by the Clerk of this Court and transmitted [229] to the United States Court of Appeals for the Ninth Circuit pursuant to the provisions of Rule 75(f), (j) and (o) of the Federal Rules of Civil Procedure and Rule 10 of the Rules of the United States Court of Appeals for the Ninth Circuit:

Documents and date documents filed or date order entered:

Petition of Petitioner and attached Exhibits—
Mar. 29, 1955.

Order to Show Cause—Mar. 29, 1955.

Memorandum of Points and Authorities in Support of Petition—April 5, 1955.

Memorandum of Points and Authorities in Opposition to Petition—April 5, 1955.

Return to Order to Show Cause and Answer to Petition and attached Exhibit—April 6, 1955.

Affidavit of Ida Mae Hermann in Opposition to Petition—April 6, 1955.

Affidavit of Leonard Rosen in Opposition to Petition—April 6, 1955.

Order Staying Subpoenas and Continuing Cause—April 7, 1955.

Affidavits of Joseph W. Stout and John D. Pepper in Support of Petition—April 18, 1955.

Supplemental Memorandum of Points and Authorities in Opposition to Petition—April 18, 1955,

Minute Order Granting Petition—April 18, 1955.

Objections of Respondents to Proposed Order—April 22, 1955.

Order Enforcing Subpoenas—April 29, 1955.

Petition for Rehearing and Motion for New Trial—April 29, 1955.

Affidavits of Ida Mae Hermann, Robert M. Smith, Captain G. D. Thompson, Richard H. Keatinge and Roland E. Ginsburg in Support of Petition for Rehearing and Motion for New Trial—April 29, 1955.

Motion for Stay of Order Enforcing Subpoenas—April 29, 1955.

Order Staying Enforcement of Subpoenas—April 29, 1955. [230]

Notice of Motion for New Trial and Petition for Rehearing—May 2, 1955.

Answer to Petition for Rehearing—May 5, 1955.

Memorandum for Order Enforcing Subpoenas—May 12, 1955.

Order Enforcing Subpoenas—May 17, 1955.

Notice of Appeal—May 19, 1955.

Stipulation re: Cost Bond on Appeal—May 19, 1955.

Motion for Stay Pending Appeal—May 19, 1955.

Stipulation re: Motion for Stay Pending Appeal—May 19, 1955.

Order Staying Order Enforcing Subpoenas—May 19, 1955.

Stipulation of Record for Hearing on Motion for Stay Pending Appeal and Designation of Record on Appeal—May 23, 1955.

Dated: May 23, 1955.

KEATINGE, ARNOLD & OLDER,

/s/ By ROLAND E. GINSBURG,

Attorneys for Respondents

Ida Mae Hermann, et al., vs.

LAUGHLIN E. WATERS, MAX F.
DEUTZ, ANDREW J. WEISZ,
and ROBERT BURSTEIN,

/s/ By ANDREW J. WEISZ,

Attorneys for Petitioner

[231]

[Endorsed]: Filed May 23, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 231, inclusive, contain the original

Petition of Petitioner and attached exhibits;

Order to Show Cause;

Memorandum of Points and Authorities in Support of Petition;

Memorandum of Points and Authorities in Opposition to Petition;

Return to Order to Show Cause and Answer to Petition and attached exhibit;

Affidavit of Ida Mae Hermann in Opposition to Petition;

Affidavit of Leonard Rosen in Opposition to Petition;

Order Staying Subpoenas and Continuing Cause;

Affidavits of Joseph W. Stout and John D. Pepper in Support of Petition;

Supplemental Memorandum of Points and Authorities in Opposition to Petition;

Minute Order Granting Petition; (Minute Order of 4-18-55)

Objections to Respondents to Proposed Order; Order Enforcing Subpoenas;

Petition for Rehearing and Motion for New Trial;

Affidavits of Ida Mae Hermann, Robert M. Smith, Captain G. D. Thompson, Richard H. Keatinge and Roland E. Ginsburg in Support of Petition for Rehearing and Motion for New Trial;

Motion for Stay of Order Enforcing Subpoenas; Order Staying Enforcement of Subpoenas;

Notice of Motion for New Trial and Petition for Rehearing;

Answer to Petition for Rehearing;

Memorandum for Order Enforcing Subpoenas; Order Enforcing Subpoenas;

Notice of Appeal;

Stipulation Re: Cost Bond on Appeal;

Motion for Stay Pending Appeal;

Stipulation Re: Motion for Stay Pending Appeal;

Order Staying Order Enforcing Subpoenas;

Stipulation of Record for Hearing on Motion for Stay Pending Appeal and Designation of Record on Appeal constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 27th day of May, A.D. 1955.

[Seal]

JOHN A. CHILDRESS,
Clerk

/s/ By CHARLES E. JONES,
Deputy Clerk

[Endorsed]: No. 14778. United States Court of Appeals for the Ninth Circuit. Ida Mae Hermann, Irving E. Hermann, Robert M. Smith, M. B. Scott, Harold Shein, H. C. Richards, George Patterson, Leonard Rosen, Orville Kelman and Captain G. D. Thompson, Appellants, vs. Civil Aeronautics Board, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: May 27, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals.
for the Ninth Circuit

No. 14,778

IDA MAE HERMANN, et al.,

Appellants,

vs.

CIVIL AERONAUTICS BOARD, Appellee.

**ORDER GRANTING MOTION FOR STAY
PENDING APPEAL**

At a Stated Term, to wit: The October Term 1954, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the thirty-first day of May in the year of our Lord one thousand nine hundred and fifty-five.

Present: Honorable William Healy, Circuit Judge, Presiding, Honorable William E. Orr, Circuit Judge, Honorable Dal M. Lemmon, Circuit Judge.

Ordered motion of Appellants for a stay pending appeal presented by Mr. Roland E. Ginsburg, counsel for Appellants, and by Mr. Andrew J. Weisz, Assistant United States Attorney, counsel for Appellee, and submitted to the court for consideration and decision.

On consideration whereof, It Is Now Here Ordered by this court, that the said motion be, and

hereby is granted, and that the order of the District Court enforcing administrative subpoenas be, and hereby is stayed pending determination of the appeal herein.

[Title of U. S. Court of Appeals and Cause.]

**APPELLANTS' STATEMENT OF POINTS
AND DESIGNATION OF RECORD**

Statement of Points

The District Court erred in the following particulars in ordering enforcement of the administrative subpoenas:

I.

The Court shifted the burden of proving materiality and relevance of the documents sought in the administrative subpoenas from the Appellee and instead required Appellants to sustain the burden of proving that the said documents are irrelevant and immaterial.

II.

The Court ordered the production of documents which were not shown by Appellee to be relevant or material and which are not relevant and material to the issues in the administrative proceeding.

III.

The Court ordered the production of a substantial number of documents which were then and now are in the possession of Appellee.

IV.

The Court failed to take into consideration the burden imposed upon Appellants and the Respondents in the administrative proceeding in producing the documents sought in the administrative proceeding and their consequent inability to properly conduct their respective businesses if deprived of their business records.

V.

The Court treated the administrative proceeding as a general, roving, exploratory investigation while, in fact, the administrative proceeding is an enforcement proceeding with specific, limited issues.

VI.

The administrative subpoenas constitute an unreasonable search and seizure in violation of the Fourth Amendment.

VII.

The administrative subpoenas, insofar as they call for the production of personal income tax returns and bank records, constitute an unreasonable invasion of the rights of privacy of Appellants Ida Mae Hermann, Irving E. Hermann and Robert M. Smith.

VIII.

The administrative subpoenas are unenforceable since the documents sought therein are not designated by subject matter.

**Designation of Record on Appeal
Pursuant to Rule 17(6) of the Rules of the**

United States Court of Appeals for the Ninth Circuit, the following constitute the designation of record of Appellants:

Petition of Petitioner and attached Exhibits.

Order to Show Cause.

Return to Order to Show Cause and Answer to Petition and attached Exhibit.

Affidavit of Ida Mae Hermann in Opposition to Petition.

Order Staying Subpoenas and Continuing Cause.

Minute Order Granting Petition.

Order Enforcing Subpoenas.

Affidavits of Ida Mae Hermann and Robert M. Smith in Support of Petition for Rehearing and Motion for New Trial.

Memorandum for Order Enforcing Subpoenas.

Order Enforcing Subpoenas.

Notice of Appeal.

Motion for Stay Pending Appeal.

Stipulation Re: Motion for Stay Pending Appeal.

Order Staying Order Enforcing Subpoenas.

Stipulation of Record for Hearing on Motion for Stay Pending Appeal and Designation of Record on Appeal.

Order of Court of Appeals Granting Motion for Stay Pending Appeal.

This Designation of Record on Appeal and Statement of Points.

Dated: July 14, 1955.

Respectfully submitted,

KEATINGE, ARNOLD & OLDER,

/s/ By ROLAND E. GINSBURG,

Attorneys for Appellants

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 15, 1955. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLEE'S COUNTER-DESIGNATION OF RECORD ON APPEAL

The Appellee, Civil Aeronautics Board, hereby designates the following items for printing in the printed Record on Appeal in the above entitled matter, in addition to those heretofore designated by the Appellants:

The Affidavits of Joseph W. Stout and John D. Pepper, in support of Petition filed April 7, 1955, of District Court Record on Appeal.

Dated this 15th day of July, 1955.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney

MAX F. DEUTZ,
Assistant U. S. Attorney, Chief of
Civil Division

ANDREW J. WEISZ,
Assistant U. S. Attorney

ROBERT BURSTEIN,
Compliance Attorney, Civil Aero-
nautics Board

/s/ **MAX F. DEUTZ,**
Assistant U. S. Attorney,
Attorneys for Appellee

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 16, 1955. Paul P. O'Brien,
Clerk.

Minute entry of argument and submission—January 30, 1956 [omitted in printing]. [167]

In United States Court of Appeals for the Ninth Circuit

Minute entry of order directing filing of opinion and filing and recording of judgment

August 2, 1956

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered. [168]

In United States Court of Appeals for the Ninth Circuit

No. 14778

IDA MAE HERMANN, IRVING E. HERMANN, ROBERT M. SMITH, M. B. SCOTT, HAROLD SHEIN, H. C. RICHARDS, GEORGE PATERSON, LEONARD ROSEN, ORVILLE KELMAN, AND CAPTAIN G. D. THOMPSON, APPELLANTS

v/s.

CIVIL AERONAUTICS BOARD, APPELLEE

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Before STEPHENS, FEE, and CHAMBERS, Circuit Judges

Opinion

Aug. 2, 1956

JAMES ALGER FEE, *Circuit Judge*: This case is related to the enforcement of ten administrative subpoenas duces tecum served upon appellants in the course of a proceeding pending before a hearing examiner of the Civil Aeronautics Board.¹

¹ This is an enforcement proceeding brought by the Compliance Section of the Board, entitled "In the Matter of Great Lakes Airlines, Inc., et al., Docket No. 6908."

The period covered by the documents required under most of the subpoenas is thirty-eight months. The individual subpoenas are comprehensive of practically all records, books and documents of or concerning the companies engaged in Docket No. 6908. The recipients of the subpoenas here in question are officers or employees of the respondent companies in Docket No. 6908 for the most part. The remaining are independent contractors who perform accounting or advertising functions for some of these companies. The hearing examiner in the administrative proceeding ordered appellants to produce all of the documents called for in each of the subpoenas at his office in [169] Los Angeles on a day certain. The objections of appellants and the respondents in Docket No. 6908 were overruled. Upon review, the action of the examiner was affirmed by the Civil Aeronautics Board. Thereupon, after appellants had failed to produce the documents, the Board brought this case in the District Court by filing a petition to enforce the administrative subpoenas under § 644 (d) of the Civil Aeronautics Act of 1938, as amended. 49 U. S. C. A. § 644 (d).²

An order to show cause, directed to appellants, was issued by the District Court. Appellants filed a return to the order and an answer to the petition, setting up that the subpoenas are "oppressive and unreasonable, and constitute an unreasonable search and seizure" and a "general fishing expedition of the affairs of the parties named in the said subpoenas," and further stated "that compliance with the said subpoenas would unduly and unreasonably hamper and interfere with the business conducted by the companies named in the said subpoenas." It is further alleged "the documents sought in the said subpoenas are not material to the issues in the proceeding known as Docket No. 6908." It was also claimed that "the said sub-

² Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Board (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof." 49 U. S. C. A. § 644 (d).

poenas call for the production of books, papers, records, and documents which relate solely to the personal financial and business affairs of respondents Ida Mae Hermann, Irving E. Hermann, Robert M. Smith and Leonard I. Rosen, which said documents are irrelevant and immaterial to the proceeding known as Docket No. 6908."

A hearing was held by the District Court in April 1955, entirely upon affidavits filed by the respective parties. The District Court, after limiting counsel for appellants and the Board to statements of their respective positions, issued an order on April 7, 1955, staying temporarily the enforcement of the subpoenas and continuing the cause to a day certain upon condition that appellants permit inspection and copying of the documents [170] sought in the subpoenas of certain of appellants, excepting only the personal income tax returns called for in the subpoenas served upon appellants, Ida Mae Hermann, Irving E. Hermann and Robert M. Smith. In accordance with this order, six employees and agents of the Board were permitted to inspect and copy certain documents called for in the subpoenas during the period between April 7 and April 15, 1955. The hearing was resumed before the District Court on April 18, 1955, at which time there were presented affidavits which purported to show that appellants had not complied with the inspection order of the District Court. Thereupon, without further notice or argument on the merits, the District Court ordered all of the subpoenas enforced exactly as written, excepting, however, the subpoena upon which the Board did not insist. Upon rehearing, the trial court issued a final order enforcing subpoenas requiring appellants to appear before the hearing examiner and produce all the documents sought in the subpoenas commencing May 31 through June 14, 1955. This order was stayed pending appeal. It seems to be conceded that there was no showing of relevancy or materiality of the documents sought in the administrative subpoenas at any time during the hearings. There was no showing that the Board did not have on file itself the documents sought therein, and there was no showing that appellants were in possession of the documents sought or that they had control of them. The posi-

tion of the Board was that the enforcement proceedings, Docket No. 6908, were such that each and all of these documents might be relevant or material thereto. In the memorandum for the order, the court made no findings that any of the documents were material or relevant to the proceedings before the Board, and took no position upon the question of whether or not some of them might be documents relating entirely to the personal affairs of some of appellants. The only basis for the order enforcement is entitled "Memorandum for Order," which says in part:

"In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all of the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings." [171]

The court also apparently ruled that, by spacing the subpoenas, two on May 31, one on June 1, two on June 2, and one each on June 6, 7, 9 and 14, the demands upon appellants would not be burdensome or oppressive.

The Civil Aeronautics Board is given broad powers of subpoena of individuals for the purpose of testifying to the matters which are before them. 49 U. S. C. A. § 644 (a), et seq. Obviously, it will be assumed that these matters will not be irrelevant to the proceeding. The Board is also given an extremely comprehensive power of inspection of all of the documents, books and papers in the office of any of the corporations or individuals operating under the control of the Board. 49 U. S. C. A. § 487 (e). In order to prevent their action from being arbitrary and oppressive, the Board should call the individuals and take testimony as to the existence and custody of the documents. Materiality and relevancy to the issues before the Board can be established in this method without the necessity of bringing truck loads of records to the hearing officer. Likewise, by the power of inspection, all the documents can be gone over, photographed and copied without regard to materiality and relevance. It is obvious that, if after these inspec-

tions the Board finds that the existence of other documents relevant and material to the issue is probable or that they are being concealed, then again a witness can be called and examined regarding these features, but the subpoenas thereafter issued should not designate all the documents in the class, but only those which the Board has found are in the possession or under the control of the persons to whom directed and which are relevant and material to the issue. It is well settled that, when a petition for the enforcement of an administrative proceeding is filed in a federal court, it initiates a case or controversy under the Constitution.³ In order to have the subpoena enforced, the issue as to whether each of the documents subpoenaed is relevant and material is a judicial question which must be passed upon by the court. There are no presumptions that the administrative agency or the hearing officer has subpoenaed only those documents which are relevant and material. These are questions which are judicial and to which the expert facility of the administrative body obviously does not apply. When the trial court said that, [172] comparing the allegations of the complaint with the demands of the subpoenas, he could not say that any of the documents were irrelevant or immaterial to the proceedings, he failed to pass upon the judicial question presented to him in the case.

The other suggestion made by the trial court, that he was not required to consider relevance and materiality at this stage of the proceedings, seems likewise to have been based upon a misconception. The court had no other case or controversy before it except the one which related to the question of whether the documents should or should not be produced. This is entirely unlike a civil case in court between two adversary parties, one of whom under the rules of the court has had a subpoena duces tecum issued to the other. Even in such a proceeding, upon proper objection the court will hold that the subpoena is too comprehensive or that various of the documents sought are irrelevant and immaterial. In a proceeding where a grand jury has subpoenaed records, the court likewise will, upon objection, prevent oppression and require that only material and relevant documents be demanded.

³ Interstate Commerce Commission vs. Brimson, 154 U. S. 447, 489.

These points were specifically raised before the trial court and are insisted upon in this appeal. There are two phases to the problem before us. First, the objection of the entities and individuals directly under the control of the Board whose records are subject to public inspection. As to these, the showing as to materiality and relevancy might not necessarily be as comprehensive as that required in other cases. The Board, we conceive, should have considerable leeway in order not to hamper its functions, which are highly important in the structure of government. But, on the other hand, the court should not be required to rubberstamp with approval the administrative subpoenas. Such an action would constitute the Board the final judges of the materiality and relevancy of each document subpoenaed. It is hornbook law that they have no such authority or function.⁴ Likewise, a distinction must be drawn between an adverse enforcement proceeding and an administrative investigatory proceeding. The lines are much more sharply drawn in the former than in the latter. [173]

The other phase of the subpoenas before us is the demand on private parties that they produce documents which they claim relate entirely to their personal affairs, such as their income tax reports. It may well be that the court, upon hearing and taking testimony, would find that such a claim was deceptive and illusory. But the court should protect the privacy of the individuals as against the encroachment of administrative bodies. Therefore, there were questions of fact here raised, as far as these individuals were concerned upon which the court was bound to give consideration and to rule positively with findings of fact.

The trial court sensed that the power of inspection gave the administrative bodies a tremendous opportunity to discover what relevant documents were in the file and what they suspected had been withheld. An inspection under the supervision of the court was ordered. This was extremely fair and, if it had been pursued for a sufficient length of time, would have permitted the Board to issue subpoenas for the exact

⁴ Martin, Internal Revenue Agent vs. Chandis Securities Co., 33 F. Supp. 478, 480, affirmed 128 F. 2d 731.

documents which they wished. The taking of testimony of the interested parties was not precluded thereby. If this process had been continued to its logical end, the Board could have limited the subpoenas to documents which everyone would have recognized were relevant and material and could then have proceeded to obtain those which were withheld, if any. Since the court proceeded along the proper lines in the first instance, all difficulties will now be removed by passing upon the questions of whether individual documents in the possession of the persons to whom the subpoena is directed have been sufficiently defined and described, as to whether each is material and relevant, whether the demand is oppressive and unreasonable, and as to whether the privacy of third persons has been invaded. If required by the circumstances, the individual documents should be inspected by the judge in court to pass upon these questions. The procedure is judicial, and protection can be furnished in no other way.

Remanded.

[File endorsement omitted.] [174]

United States Court of Appeals for the Ninth Circuit

No. 14778

IDA MAE HERMANN, IRVING E. HERMANN, ROBERT M. SMITH,
M. B. SCOTT, HAROLD SHEIN, H. C. RICHARDS, GEORGE PAT-
TERSON, LEONARD ROSEN, ORVILLE KELMAN, AND CAPTAIN
G. D. THOMPSON, APPELLANTS

vs.

CIVIL AERONAUTICS BOARD, APPELLEE

Judgment

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

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On consideration whereof, it is now here ordered and adjudged by this Court, that this cause be, and hereby is remanded.

[Endorsed] Judgment filed and entered August 2, 1956.

PAUL P. O'BRIEN,

Clerk. [175]

[Clerk's certificate to foregoing transcript omitted in printing.] [176]

Supreme Court of the United States

No. 540, October Term, 1956

CIVIL AERONAUTICS BOARD, PETITIONER

vs.

IDA MAE HERMANN ET AL.

Order allowing certiorari

Filed January 21, 1957

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. [177]

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. —

CIVIL AERONAUTICS BOARD, PETITIONER

v.

IDA MAE HERMANN, ET AL.

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT**

The Solicitor General, on behalf of the Civil Aeronautics Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on August 2, 1956.

OPINION BELOW

The memorandum of the district court (R. 143-144) is not reported. The opinion of the court of appeals (Appendix, pp. 15-22) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Appendix, p. 23) was entered on August 2, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Civil Aeronautics Board, in order to obtain judicial enforcement of subpoenas *duces tecum* (issued during an administrative proceeding) for production of groups of documents, is required to satisfy the court that each of the documents is "relevant and material" to the issues in the proceeding, and is in the possession of the person to whom the subpoena is directed.
2. Whether the Board, prior to issuing such subpoenas, is required (a) to "take testimony" in a preliminary administrative hearing to determine the existence and location of the documents, and then (b) to inspect the documents to determine their relevancy and materiality.

STATUTE INVOLVED

Section 1004 of the Civil Aeronautics Act of 1938, as amended, 52 Stat. 1021, 49 U. S. C. 644, provides as follows:

EVIDENCE

- (a) Any member or examiner of the Authority [Board], when duly designated by the Authority [Board] for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Authority [Board]. In all cases heard by an examiner or a single member the Authority [Board] shall hear or receive argument on request of either party.

POWER TO ISSUE SUBPENA

(b) For the purposes of this Act the Authority [Board] shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation. Witnesses summoned before the Authority [Board] shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

ENFORCEMENT OF SUBPENA

(c) The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the United States, at any designated place of hearing. In case of disobedience to a subpoena, the Authority [Board], or any party to a proceeding before the Authority [Board], may invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section.

CONTEMPT

(d) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Authority [Board] (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court

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may be punished by such court as a contempt thereof.

STATEMENT

On October 14, 1954, the Civil Aeronautics Board instituted an administrative enforcement proceeding against a group of individuals and business entities who collectively constitute, and operate as, the "Skycoach" air travel system (R. 14-38). The respondents in that proceeding are two irregular air carriers (Great Lakes Airlines and Currey Air Transport); two individuals (Ida Mae and Irving E. Hermann); a partnership of such individuals engaged in the ownership and leasing of aircraft; two corporations which supply gasoline products and perform banking functions, respectively; and twelve "Skycoach" ticket agency corporations.

The principal charges made by the Board's complaint (R. 15-35) were as follows:

1. The individual respondents have acquired and maintained control of the other respondents, in violation of Section 408 (a) of the Act (49 U. S. C. 488 (a)). This has been accomplished through nominees or stock ownership; control of property, employees and equipment; leasing of aircraft; control of traffic solicitation and handling; financial management and control; and agreements, arrangements, and understandings of various types (R. 24-25, 26-27, 32-33).

2. The two air carrier respondents, through agreements between themselves and the other respondents, have collectively held out and operated regular and frequent air transportation service between designated

points, in violation of Section 401 of the Act (49 U. S. C. 481) and Part 291 of the Board's Economic Regulations (14 CFR 291:1, *et seq.*) (R. 19-22). The carriers and ticket agents have, on numerous occasions, violated the Board's Economic Regulations with respect to methods of ticketing passengers, the form of tickets used, and agreements between the carriers and the ticket agents (R. 30-32).

3. All of the foregoing violations were knowing and wilful, and were deliberately planned and executed for the purpose of evading and circumventing the Act and the regulations promulgated thereunder, and for the purpose of concealing from the Board the true nature of the operation (R. 34).

In the course of this proceeding, the Hearing Examiner issued a number of subpoenas *duces tecum* directed to several of the respondents, their officers and employees, and independent auditors and advertising agencies under contract with them (R. 39-60). The subpoenas called for production of the following categories of documents: (1) financial and corporate records of certain of the respondents (including personal income tax returns); (2) correspondence, memoranda, and agreements between the respondents; (3) personnel records of certain of the respondents; (4) data relating to ownership, identification, and utilization of aircraft and assignment of flight personnel; (5) advertising material disseminated to the public by radio, newspapers, display posters, and business cards; (6) airline tickets used by some of the respondents (flight coupons, auditor and agent coupons, and specimens of tickets and exchange orders).

Respondents moved to quash the subpoenas on the ground that they were burdensome and constituted a general fishing expedition into their affairs. The motion was denied by the Hearing Examiner, and then by the Board, which held that

The subpoenas are not vague and indefinite, or incapable of understanding. Each one specifies the period concerning which documents and records are to be produced where appropriate, and describes the desired materials with particularity. In the light of the charges against the respondents, and particularly those relating to common control and activities constituting air transportation on the part of the non-carrier respondents, it does not appear to us that the subpoenas are excessively broad or unreasonable in scope. * * * They do not constitute fishing expeditions, but rather are requests for material relevant to previously defined charges and issues. [R. 64-65, 66.]

Respondents refused to comply with the subpoenas (R. 13), and the Board then filed in the district court a petition for their enforcement. (R. 3-13). The court (Judge Peirson M. Hall) initially continued the cause for ten days, on condition that certain of the respondents make the records available at their places of business to representatives of the Board (R. 115-116). The inspection proved abortive, however, because the respondents failed to produce many of the items covered by the subpoenas (R. 117-126). After further hearings, the district court on May 17, 1955 issued an order enforcing the subpoenas substantially.

as issued (R. 144). In a memorandum (R. 143), the court stated:

In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all of the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings.

On appeal, the court of appeals reversed the district court's order of enforcement, and remanded for further proceedings.¹

The court, in an opinion by Judge James Alger Fee, held (Appendix, p. 19) that, "[i]n order to prevent their action from being arbitrary and oppressive," the Board should observe the following procedures in issuing subpoenas *duces tecum*:

1. It should first call the individuals concerned "and take testimony as to the existence and custody of the documents" and thus establish their "[m]ateriality and relevance to the issues before the Board."
2. In the exercise of its "power of inspection" the Board should then examine, photograph and copy "all the documents * * * without regard to materiality and relevancy."
3. If, after the inspection, the Board finds that there probably are other documents "relevant and material to the issue" or that they are being con-

¹ The district court's order was stayed pending appeal (R. 154-161).

cealed, "then again a witness can be called and examined regarding these features."

4. Subpoenas should be issued only after the foregoing proceedings, and they "should not designate all the documents in the class, but only those which the Board has found are in the possession or under the control of the persons to whom directed and which are relevant and material to the issue."

Upon a petition for enforcement of the subpoenas, the district court must determine "whether each of the documents subpoenaed is relevant and material" (Appendix, p. 20). [Emphasis added.]

The court of appeals directed the district court, upon remand, to determine (by inspecting the documents, if necessary) whether the "individual documents" in the possession of the persons to whom the subpoena is directed (1) "have been sufficiently defined and described," (2) whether "each is material and relevant," and (3) whether the demand is "oppressive and unreasonable" (Appendix, p. 22).²

REASONS FOR GRANTING THE WRIT

The novel and burdensome procedures which the court of appeals has prescribed for the issuance and enforcement of administrative subpoenas are contrary to the settled principles in this field, and would seriously interfere with the prompt and efficient conduct

² The court of appeals also directed the district court to consider whether the income tax returns which had been subpoenaed constituted an invasion of the "privacy of third persons" because such returns "relate entirely to their personal affairs" (Appendix, pp. 21-22).

of administrative, investigatory and enforcement proceedings by the Civil Aeronautics Board and by other governmental agencies.

1. The court of appeals held that the Board is not entitled to judicial enforcement of a subpoena *duces tecum* unless it affirmatively establishes that "each" of the documents subpoenaed is "relevant and material" to the inquiry, and is in the possession of the person to whom the subpoena is addressed. However, this Court and numerous courts of appeals (including the court below) have consistently enforced subpoenas designating documents by broad classes, without any showing as to the relevancy and materiality of individual documents, or that the persons subpoenaed possess the documents. *E. g., Consolidated Rendering Company v. Vermont*, 207 U. S. 541; *Wheeler v. United States*, 226 U. S. 478; *Brown v. United States*, 276 U. S. 134; *Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186; *Newfield v. Ryan*, 91 F. 2d 700 (C. A. 5) certiorari denied 302 U. S. 729; *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389 (C. A. 10); *Hagen v. Porter*, 156 F. 2d 362 (C. A. 9), certiorari denied, 329 U. S. 729; *Mines and Metals Corp. v. Securities and Exchange Commission*, 200 F. 2d 317 (C. A. 9).^{*} All that

* The *Consolidated Rendering*, *Wheeler* and *Brown* cases all involved grand jury subpoenas. However, the settled limitations on the scope of inquiry into the validity of such subpoenas (see *Blair v. United States*, 250 U. S. 273) are equally applicable to administrative subpoenas. *Perkins v. Endicott Johnson Corp.*, 128 F. 2d 208, 213-14 (C. A. 2), affirmed, 317 U. S. 501; *Genecov v. Federal Petroleum Board*, 146 F. 2d 596 (C. A. 5).

is required for enforcement is a showing that "the documents sought are relevant to the inquiry." *Oklahoma Press case, supra*, p. 209. The standard of relevancy varies "in relation to the nature, purposes and scope of the inquiry" (*ibid.*), and enforcement has been directed upon a showing that the material is "not plainly * * * irrelevant to any lawful purpose of the agency" (*Endicott Johnson Corp. v. Perkins*, 317 U. S. 501, 509), that it "relates to or touches the matter under investigation" (*Cudahy Packing Co. v. National Labor Relations Board*, 117 F. 2d 692, 694 (C. A. 10), or that it is "probably relevant" to a lawful investigation (*Smith v. Porter*, 158 F. 2d 372, 374 (C. A. 9), certiorari denied, 331 U. S. 816; see *Jackson Packing Co. v. National Labor Relations Board*, 204 F. 2d 842, 843 (C. A. 5)). Questions as to the relevancy and materiality of individual documents are, we submit, properly for the determination of the examiner when the documents ultimately are offered in evidence at the hearing, and not for the district court when called upon to enforce subpoenas covering groups of documents.

The basic issues in the Board's administrative proceeding here are whether the two individual respondents have acquired and retained control of two airlines and a number of affiliated companies, and whether they have operated a scheduled airline, in violation of the Civil Aeronautics Act and the Board's regulations. The documents here sought—financial, corporate and personnel records, correspondence and agreements of the respondent companies, data relating

to aircraft and assignment of flight personnel, advertising material, and information relating to ticketing practices—were all broadly “relevant to the [Board’s] inquiry” (*Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 307), and the Board was entitled to their production without showing the particular relevancy of each individual document sought.

The court below also erred, we believe, in holding that the Board, in order to obtain enforcement, is required to show that the documents are in the possession or under the control of the persons from whom production is sought. Lack of possession or control may be asserted, in appropriate circumstances, as a ground for opposing enforcement; however, the agency is not required to show possession or control as part of its affirmative case. Indeed, the court below previously had held that the question whether the person to whom an administrative subpoena was directed had “custody” or “control” of “all the documents” sought was not properly raised as a defense to an enforcement proceeding, since “the proper time to decide such an issue is when the order of the district court is disobeyed.” *Mines and Metals Corporation v. Securities and Exchange Commission*, 200 F. 2d 317, 321; cf. *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389, 392–393 (C. A. 10); *Hagen v. Porter*, 156 F. 2d 362 (C. A. 9), certiorari denied, 329 U. S. 729. Where, as here, production is sought of corporate or firm records, or of personal records of individuals, it may properly be presumed that officials of such corporations or firms, or the individuals whose

personal records are sought, in fact have possession or control.*

The procedures which the court of appeals directed the Board to follow prior to issuing subpoenas—to "take testimony" to determine the existence and location of the documents, and then to inspect the documents to determine their relevancy and materiality—rest primarily upon its erroneous view that, in order to obtain enforcement, the agency is required to show the relevancy and materiality of each document sought, and that it is in the possession of the person to whom the subpoena is directed (see *supra* pp. 9-11).*

2. The elaborate, burdensome, and time-consuming procedures which the court of appeals has prescribed for agency and court would seriously and needlessly handicap administrative agencies in effectively exer-

*The court of appeals directed the district court to consider on remand whether the subpoenas, insofar as they require production of income tax returns, invade the "privacy of third persons." But the persons from whom such returns were sought are not strangers to the case. Two of them (the Hermanns) are respondents in the Board proceeding, and the third (Robert M. Smith) is alleged to be a nominee through whom they have illegally acquired and maintained control over a number of corporations (R. 14-35). In any event, we think it clear that an agency may by subpoena compel production of pertinent tax returns. *Smith v. Porter*, 158 F. 2d 372, 373 (C. A. 9), certiorari denied, 331 U. S. 816.

*There is nothing in the Civil Aeronautics Act which would require the Board to exercise its power, under Section 407 (e), to inspect the air-carrier records and properties before exercising its subpoena power under Section 1004 (b). The two powers are separate and independent of each other. See *Westside Ford, Inc. v. United States*, 206 F. 2d 627, 629-630, 634 (C. A. 9); *Porter v. Gantner & Mattern Co.*, 156 F. 2d 886, 889-890 (C. A. 9).

cising the powers which Congress has conferred upon them for obtaining information, and thus would greatly interfere with efficient and fair enforcement. For those procedures would result in a series of protracted hearings, conducted at the outset of an administrative proceeding and extending over possibly many months, in which the agency would be required to demonstrate the relevancy, materiality, and location of perhaps hundreds, or even thousands, of documents. If the agency were required to make such a showing as to each individual document to obtain enforcement of subpoenas covering broad categories of documents, the practical result would be to turn many subpoena proceedings into virtually full-dress hearings on the merits, both in the administrative agency and before the courts. Furthermore, the same issues of relevancy and materiality would again have to be determined by the examiner upon the ultimate offer of documents in evidence. Instead of achieving a greater degree of fairness to the parties, the procedures required by the court of appeals' decision plainly would produce a contrary result.

The decision below is equally applicable to the numerous other administrative agencies which possess comparable subpoena powers. Plainly, its correctness presents an important question in the administration of the Civil Aeronautics Act and other Federal regulatory statutes.

CONCLUSION

The decision below conflicts with the principles enunciated by this Court and other courts of appeals

in relation to the issuance and enforcement of administrative subpoenas, and raises broad and important questions of administrative law. It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

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OCTOBER 1956.

APPENDIX

In the United States Court of Appeals for the Ninth Circuit

No. 14778

Aug. 2, 1956

IDA MAE HERMANN, IRVING E. HERMANN, ROBERT M. SMITH, M. B. SCOTT, HAROLD SHEIN, H. D. RICHARDS, GEORGE PATTERSON, LEONARD ROSEN, ORVILLE KELMAN AND CAPTAIN G. D. THOMPSON, APPELLANTS

vs.

CIVIL AERONAUTICS BOARD, APPELLEE

Upon Appeal from the United States District Court for the Southern District of California, Central Division

Before STEPHENS, FEE and CHAMBERS, Circuit Judges

JAMES ALGER FEE, Circuit Judge:

This case is related to the enforcement of ten administrative subpoenas duces tecum served upon appellants in the course of a proceeding pending before a hearing examiner of the Civil Aeronautics Board.¹ The period covered by the documents required under most of the subpoenas is thirty-eight months. The

¹ This is an enforcement proceeding brought by the Compliance Section of the Board, entitled "In the Matter of Great Lakes Airlines, Inc., et al., Docket No. 6908."

individual subpoenas are comprehensive of practically all records, books and documents of or concerning the companies engaged in Docket No. 6908. The recipients of the subpoenas here in question are officers or employees of the respondent companies in Docket No. 6908 for the most part. The remaining are independent contractors who perform accounting or advertising functions for some of these companies. The hearing examiner in the administrative proceeding ordered appellants to produce all of the documents called for in each of the subpoenas at his office in Los Angeles on a day certain. The objections of appellants and the respondents in Docket No. 6908 were overruled. Upon review, the action of the examiner was affirmed by the Civil Aeronautics Board. Thereupon, after appellants had failed to produce the documents, the Board brought this case in the District Court by filing a petition to enforce the administrative subpoenas under § 644 (d) of the Civil Aeronautics Act of 1938, as amended. 49 U. S. C. A. § 644 (d).²

An order to show cause directed to appellants, was issued by the District Court. Appellants filed a return to the order and an answer to the petition, setting up that the subpoenas are "oppressive and unreasonable, and constitute an unreasonable search and seizure" and a "general fishing expedition of the affairs of the parties named in the said subpoenas," and further stated "that compliance with the said

² "Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Board (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof." 49 U. S. C. A. § 664 (d).

subpoenas would unduly and unreasonably hamper and interfere with the business conducted by the companies named in the said subpoenas." It is further alleged "the documents sought in the said subpoenas are not material to the issues in the proceeding known as Docket No. 6908." It was also claimed that "the said subpoenas call for the production of books, papers, records and documents which relate solely to the personal financial and business affairs of respondents Ida Mae Hermann, Irving E. Hermann, Robert M. Smith and Leonard I. Rosen, which said documents are irrelevant and immaterial to the proceeding known as Docket No. 6908."

A hearing was held by the District Court in April, 1955, entirely upon affidavits filed by the respective parties. The District Court, after limiting counsel for appellants and the Board to statements of their respective positions, issued an order on April 7, 1955, staying temporarily the enforcement of the subpoenas and continuing the cause to a day certain upon condition that appellants permit inspection and copying of the documents sought in the subpoenas of certain of appellants, excepting only the personal income tax returns called for in the subpoenas served upon appellants, Ida Mae Hermann, Irving E. Hermann and Robert M. Smith. In accordance with this order, six employees and agents of the Board were permitted to inspect and copy certain documents called for in the subpoenas during the period between April 7 and April 15, 1955. The hearing was resumed before the District Court on April 18, 1955, at which time there were presented affidavits which purported to show that appellants had not complied with the inspection order of the District Court. Thereupon, without further notice or argument on the merits, the District Court ordered all of the subpoenas en-

forced exactly as written, excepting, however, the subpoena upon which the Board did not insist. Upon rehearing, the trial court issued a final order enforcing subpoenas requiring appellants to appear before the hearing examiner and produce all the documents sought in the subpoenas commencing May 31 through June 14, 1955. This order was stayed pending appeal. It seems to be conceded that there was no showing of relevancy or materiality of the documents sought in the administrative subpoenas at any time during the hearings. There was no showing that the Board did not have on file itself the documents sought therein, and there was no showing that appellants were in possession of the documents sought or that they had control of them. The position of the Board was that the enforcement proceedings, Docket No. 6908, were such that each and all of these documents might be relevant or material thereto. In the memorandum for the order, the court made no findings that any of the documents were material or relevant to the proceedings before the Board, and took no position upon the question of whether or not some of them might be documents relating entirely to the personal affairs of some of appellants. The only basis for the order enforcement is entitled "Memorandum for Order," which says in part:

In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings.

The court also apparently ruled that, by spacing the subpoenas, two on May 31, one on June 1, two on June

2, and one each on June 6, 7, 9 and 14, the demands upon appellants would not be burdensome or oppressive.

The Civil Aeronautics Board is given broad powers of subpoena of individuals for the purpose of testifying to the matters which are before them. 49 U. S. C. A. § 644 (a), et seq. Obviously, it will be assumed that these matters will not be irrelevant to the proceeding. The Board is also given an extremely comprehensive power of inspection of all of the documents, books and papers in the office of any of the corporations or individuals operating under the control of the Board. 49 U. S. C. A. § 487 (e). In order to prevent their action from being arbitrary and oppressive, the Board should call the individuals and take testimony as to the existence and custody of the documents. Materiality and relevancy to the issues before the Board can be established in this method without the necessity of bringing truck loads of records to the hearing officer. Likewise, by the power of inspection, all the documents can be gone over, photographed and copied without regard to materiality and relevance. It is obvious that, if after these inspections the Board finds that the existence of other documents relevant and material to the issue is probable or that they are being concealed, then again a witness can be called and examined regarding these features, but the subpoenas thereafter issued should not designate all the documents in the class, but only those which the Board has found are in the possession or under the control of the persons to whom directed and which are relevant and material to the issue. It is well settled that, when a petition for the enforcement of an administrative proceeding is filed in a federal court, it initiates a case or controversy under the Constitution.³ In

³ *Interstate Commerce Commission vs. Brimson*, 154 U. S. 447, 489.

order to have the subpoena enforced, the issue as to whether each of the documents subpoenaed is relevant and material is a judicial question which must be passed upon by the court. There are no presumptions that the administrative agency or the hearing officer has subpoenaed only those documents which are relevant and material. These are questions which are judicial and to which the expert facility of the administrative body obviously does not apply. When the trial court said that comparing the allegations of the complaint with the demands of the subpoenas, he could not say that any of the documents were irrelevant or immaterial to the proceedings, he failed to pass upon the judicial question presented to him in the case.

The other suggestion made by the trial court, that he was not required to consider relevance and materiality at this stage of the proceedings, seems likewise to have been based upon a misconception. The court had no other case or controversy before it except the one which related to the question of whether the documents should or should not be produced. This is entirely unlike a civil case in court between two adversary parties, one of whom under the rules of the court has had a subpoena duces tecum issued to the other. Even in such a proceeding, upon proper objection the court will hold that the subpoena is too comprehensive or that various of the documents sought are irrelevant and immaterial. In a proceeding where a grand jury has subpoenaed records, the court likewise will, upon objection, prevent oppression and require that only material and relevant documents be demanded.

These points were specifically raised before the trial court and are insisted upon in this appeal. There are two phases to the problem before us. First, the objection of the entities and individuals directly under

the control of the Board whose records are subject to public inspection. As to these, the showing as to materiality and relevancy might not necessarily be as comprehensive as that required in other cases. The Board, we conceive, should have considerable leeway in order not to hamper its functions, which are highly important in the structure of government. But, on the other hand, the court should not be required to rubberstamp with approval the administrative subpoenas. Such an action would constitute the Board the final judges of the materiality and relevancy of each document subpoenaed. It is hornbook law that they have no such authority or function. Likewise, a distinction must be drawn between an adverse enforcement proceeding and an administrative investigatory proceeding. The lines are much more sharply drawn in the former than in the latter.

The other phase of the subpoenas before us is the demand on private parties that they produce documents which they claim relate entirely to their personal affairs, such as their income tax reports. It may well be that the court, upon hearing and taking testimony, would find that such a claim was deceptive and illusory. But the court should protect the privacy of the individuals as against the encroachment of administrative bodies. Therefore, there were questions of fact here raised as far as these individuals were concerned upon which the court was bound to give consideration and to rule positively with findings of fact.

The trial court sensed that the power of inspection gave the administrative bodies a tremendous opportunity to discover what relevant documents were in the file and what they suspected had been with-

held. An inspection under the supervision of the court was ordered. This was extremely fair and, if it had been pursued for a sufficient length of time, would have permitted the Board to issue subpoenas for the exact documents which they wished. The taking of testimony of the interested parties was not precluded thereby. If this process had been continued to its logical end, the Board could have limited the subpoenas to documents which everyone would have recognized were relevant and material and could then have proceeded to obtain those which were withheld, if any. Since the court proceeded along the proper lines in the first instance, all difficulties will now be removed by passing upon the questions of whether individual documents in the possession of the persons to whom the subpoena is directed have been sufficiently defined and described, as to whether each is material and relevant, whether the demand is oppressive and unreasonable, and as to whether the privacy of third persons has been invaded. If required by the circumstances, the individual documents should be inspected by the judge in court to pass upon these questions. The procedure is judicial, and protection can be furnished in no other way.

Remanded.

(Endorsed) Opinion. Filed Aug. 2, 1956.

PAUL P. O'BRIEN, Clerk.

In the United States Court of Appeals for the Ninth
Circuit

No. 14778

IDA MAE HERMANN, IRVING E. HERMANN, ROBERT M.
SMITH, M. B. SCOTT, HAROLD SHEIN, H. C.
RICHARDS, GEORGE PATTERSON, LEONARD ROSEN,
ORVILLE KELMAN, AND CAPTAIN G. D. THOMPSON,
APPELLANTS

vs.

CIVIL AERONAUTICS BOARD, APPELLEE

JUDGMENT

Appeal from the United States District Court for
the Southern District of California, Central Division.

This cause came on to be heard on the Transcript
of the Record from the United States District Court
for the Southern District of California, Central Divi-
sion, and was duly submitted.

On consideration whereof, it is now here ordered
and adjudged by this Court, that this cause be, and
hereby is remanded.

(Endorsed) Judgment. Filed and Entered: Au-
gust 2, 1956.

PAUL P. O'BRIEN, Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 540

CIVIL AERONAUTICS BOARD, PETITIONER

v.

IDA MAE HERMANN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD

OPINIONS BELOW

The memorandum of the district court (R. 143-144) is not reported. The opinion of the court of appeals (R. 167-173) is reported at 237 F. 2d 359.

JURISDICTION

The judgment of the court of appeals was entered on August 2, 1956 (R. 173-174). The petition for a writ of certiorari was filed on October 31, 1956, and was granted on January 21, 1957 (R. 174). The jurisdiction of this Court is conferred by 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Civil Aeronautics Board, in order to obtain judicial enforcement of subpoenas *duces tecum* (issued during an administrative proceeding) for production of groups of documents, is required to satisfy the district court that *each* of the documents is "relevant and material" to the issues in the proceeding, and is in the possession of the person to whom the subpoena is directed.
2. Whether the Board, prior to issuing such subpoenas, is required (a) to "take testimony" in a preliminary administrative hearing to determine the existence and location of the documents, and then (b) to inspect the documents, in order to determine their relevancy and materiality.

STATUTE INVOLVED

Pertinent provisions of the Civil Aeronautics Act of 1938, as amended, 52 Stat. 977, 49 U. S. C. 401 *et seq.*, are set forth in the appendix.

STATEMENT

On October 14, 1954, the Civil Aeronautics Board instituted an administrative enforcement proceeding against a group of individuals and business entities who collectively constitute, and operate as, the "Skycoach" air travel system (R. 14-38). The respondents in that proceeding are two irregular air carriers (Great Lakes Airlines and Currey Air Transport); two individuals (Ida Mae and Irving E. Hermann); a partnership of such individuals engaged in the own-

ership and leasing of aircraft (Nevada Aero Trades Company); two corporations which supply gasoline products and perform banking functions, respectively (Air International, Inc., and Great Lakes Airlines Agency, Inc.); and twelve "Skycoach" ticket agency corporations.

The principal charges made by the Board's complaint (R. 15-35) were as follows:

1. The individual respondents have acquired and maintained control of the other respondents, in violation of Section 408 (a) of the Act (49 U. S. C. 488 (a)). This has been accomplished through nominees or stock ownership; control of property, employees and equipment; leasing of aircraft; control of traffic solicitation and handling; financial management and control; and agreements, arrangements, and understandings of various types (R. 24-25, 26-27, 32-33).

2. The two air carrier respondents, through agreements between themselves and the other respondents, have collectively held out and operated regular and frequent air transportation service between designated points, in violation of Section 401 of the Act (49 U. S. C. 481) and Part 291 of the Board's Economic Regulations (14 CFR 291.1 *et seq.*) (R. 19-22).¹ The carriers and ticket agents have, on numerous occasions, violated the Board's Economic Regulations with respect to methods of ticketing passengers, the form of tickets used, and agreements between the carriers and the ticket agents (R. 30-32).

¹ When the complaint issued, there was an outstanding Board order, entered in August, 1952, which directed one of the carriers to cease and desist from similar violations (R. 20).

3. All of the foregoing violations were knowing and wilful, and were deliberately planned and executed for the purpose of evading and circumventing the Act and the regulations promulgated thereunder, and for the purpose of concealing from the Board the true nature of the operation (R. 34).

The complaint sought revocation of the operating authority of the two carriers, and a cease-and-desist order against the other respondents (R. 35).

In the course of this proceeding, the Hearing Examiner issued a number of subpoenas *duces tecum* directed to several of the respondents, their officers and employees, and independent auditors and advertising agencies under contract with them (R. 39-60). The subpoenas called for the production of the following categories of documents: (1) financial and corporate records, including personal income tax returns; (2) correspondence, memoranda, and agreements; (3) personnel records; (4) data relating to ownership, identification, and utilization of aircraft and assignment of flight personnel; (5) advertising material disseminated to the public by radio, newspapers, display posters, and business cards; (6) airline tickets, including flight coupons, auditor and agent coupons, and specimens of tickets and exchange orders. Although most of the documents were designated by groups, particular documents also were specified.

Respondents moved to quash the subpoenas on the grounds, *inter alia*, that they were vague, excessively broad and unreasonable in scope, oppressive and burdensome, and constituted a general fishing expedition into their affairs (R. 64). The motion was denied by

the Hearing Examiner (R. 61), and then by the Board, which held that:

The subpoenas are not vague and indefinite, or incapable of understanding. Each one specifies the period concerning which documents and records are to be produced where appropriate, and describes the desired materials with particularity. In the light of the charges against the respondents, and particularly those relating to common control and activities constituting air transportation on the part of the non-carrier respondents, it does not appear to us that the subpoenas are excessively broad or unreasonable in scope. In this connection, we note that Section 1004 of the Act specifically authorizes the issuance of subpoenas for the "production of ALL books, papers, and documents relating to any matter under investigation." The materials requested appear to be relevant to the matters under investigation here * * *. [R. 64-65]

While certain of the subpoenas request numerous categories of documents and records of the respondents, there is no factual showing of the actual volume of materials involved, or that compliance will be unduly burdensome or oppressive * * *. [The subpoenas] do not constitute fishing expeditions, but rather are requests for material relevant to previously defined charges and issues. [R. 65-66]

* The Board pointed out (R. 65) that, "[t]o the extent that compliance might require the yielding up of books and records necessary for the conduct of day-to-day business, or prove otherwise oppressive, the Examiner upon a proper showing to this effect has ample authority to permit an examination and

Respondents refused to comply with the subpoenas (R. 13), and the Board then filed in the district court a petition for their enforcement (R. 3-13). The court (Judge Peirson M. Hall), initially continued the cause for ten days, on condition that certain of the respondents make the records available at their places of business to representatives of the Board (R. 115-116). The inspection proved abortive, however, because the respondents failed to produce many of the items covered by the subpoenas (R. 117-126). After further hearings, the district court on May 17, 1955 entered an order enforcing the subpoenas substantially as issued (R. 144).³ In a memorandum (R. 143), the court stated:

In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all of the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings.⁴

copying of the materials at the places of business involved, and under conditions which will produce a minimum of interference with business activities."

³ The order superseded a prior order of enforcement which the court had entered on April 29, 1955, following the unsuccessful inspection (R. 126-129).

⁴ The court staggered the return dates of the subpoenas, "so that the respondents will not be deprived of all of their books and records at the same time" (R. 143; see R. 145).

On appeal, the court of appeals reversed the district court's order of enforcement, and remanded for further proceedings.*

The court, in an opinion by Circuit Judge Fee, held (R. 170-171) that, "[i]n order to prevent their action from being arbitrary and oppressive," the Board should observe the following procedures in issuing subpoenas *duces tecum*:

1. It should first call the individuals concerned "and take testimony as to the existence and custody of the documents" and thus establish their "[m]ateriality and relevance to the issues before the Board."
2. In the exercise of its "power of inspection," the Board should then examine, photograph and copy "all the documents * * * without regard to materiality and relevancy."
3. If, after the inspection, the Board finds that there probably are other documents "relevant and material to the issue" or that they are being concealed, "then again a witness can be called and examined regarding these features."
4. Subpoenas should be issued only after the foregoing proceedings, and they "should not designate all the documents in the class, but only those which the Board has found are in the possession or under the control of the persons to whom directed and which are relevant and material to the issue,"

* The district court's order had been stayed pending appeal (R. 154, 161).

Upon a petition for enforcement of the subpoenas, the district court must determine "whether *each* of the documents subpoenaed is relevant and material" (R. 171). [Emphasis added.]

The court of appeals directed the district court, upon remand, to determine (by inspecting the documents, if necessary) whether the "individual documents" in the possession of the persons to whom the subpoena is directed (1) "have been sufficiently defined and described," (2) whether "each is material and relevant," and (3) whether the demand is "oppressive and unreasonable" (R. 173). The court of appeals also directed the district court to consider whether the income tax returns which had been subpoenaed constituted an invasion of the "privacy of third persons" because such returns "relate entirely to their personal affairs" (R. 172-173).

SUMMARY OF ARGUMENT

I.

Section 1004 (b) of the Civil Aeronautics Act authorizes the Civil Aeronautics Board to require by subpoena the production of "all books, papers, and documents relating to any matter under investigation." Despite this broad authority, the court of appeals held that the Board may obtain judicial enforcement of a subpoena *duces tecum* for production of groups of documents only by showing that "*each*" of the documents subpoenaed is relevant and material, and is in the possession or control of the person from whom production is sought. This ruling is contrary to the settled law in this field, would most seriously

interfere with the efficient conduct of administrative proceedings, and would impose a heavy burden upon the courts.

A. This Court and various courts of appeals (including the court below in at least two earlier cases) consistently have enforced or upheld administrative subpoenas *duces tecum* (issued under statutory provisions similar to those in the instant case) designating documents by broad classes, upon a showing that the material sought is "not plainly incompetent or irrelevant to any lawful purpose" of the agency (*Endicott Johnson Corp. v. Perkins*, 317 U. S. 501, 509), or is generally "relevant to the inquiry" (*Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186, 209). With the exception of the decision below (and two other recent decisions by the same court), we know of no appellate case which has required the Government to establish the relevancy of individual documents. Questions as to the relevancy and materiality of individual documents first become ripe for determination when the documents are offered in evidence at the administrative hearing; they are not ripe when the district court is called upon, preliminarily, to enforce subpoenas covering groups of documents.

Ordinarily, the relevancy of particular documents can be determined only in the factual context of the hearing as it develops, and not in preliminary enforcement proceedings. Any irrelevant documents which are offered in evidence presumably will be excluded by the examiner or disregarded by the Board; and any reliance by the Board on improper evidence

can be fully challenged on judicial review of any final order which the Board may enter against respondents.

The settled rule that courts will enforce administrative subpoenas calling for groups of documents which are generally relevant would not, as the court of appeals suggested, turn the district court into a rubber stamp for the agency. To an application for enforcement of a subpoena, "appropriate defence may be made." *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 49. Thus, the district court has ample scope to exercise its discretion to protect against arbitrary use of the subpoena power. But, in the absence of any showing of arbitrariness (and none has been here shown), the Government is entitled to enforcement.

The procedures required by the court of appeals would turn many subpoena enforcement proceedings into virtually full dress hearings on the merits, both before the agency and in the courts. Before issuing subpoenas, the Board would be required (1) to "take testimony" to determine the existence and location of the documents, (2) to inspect the documents, and (3) to call witnesses again if such inspection indicates that there may be other pertinent material. Thus, at the outset of the administrative proceeding, there would be a series of protracted preliminary hearings in which the agency would be required to ascertain the existence, and investigate the relevancy, of perhaps hundreds, or even thousands, of documents. The enforcement proceedings in the district court would be almost equally protracted. Finally, if the

subpoenas ultimately were enforced, the same questions as to the relevancy and materiality of individual documents would again have to be determined by the examiner upon offer of the documents in evidence. The practical consequence of such procedures would be seriously to interfere with the efficient conduct of administrative proceedings and to place a heavy and unnecessary burden on the courts.

B. The Board is not required to show as part of its affirmative case that "the documentary evidence called for [is] * * * in the possession or under the control of the witness * * *." *Nelson v. United States*, 201 U. S. 92, 115. The appropriate officers of firms whose records are sought, or the individuals whose personal records are sought, may properly be presumed to have possession thereof. Respondents have never alleged that they do not possess or control the subpoenaed material, and they would not be held in contempt for failing in good faith to produce books and records not in their possession. Requiring the agency to prove possession and control would serve no valid purpose and would further delay the conduct of administrative proceedings.

C. Nor is the Board required, as the court of appeals held, to exercise its statutory power to inspect air carrier records before exercising its subpoena powers. The two powers are separate and independent, and the subpoena power is neither qualified by, nor dependent upon the prior exercise of, the inspection power. Moreover, the latter power extends only to records of air carriers and persons having

control of, or affiliated with, such carriers; it would not cover all records which the Board may require in its proceedings.

II

The district court properly enforced the subpoenas, since the material sought was broadly relevant to the issues in the administrative proceeding, and the subpoenas were not vague or indefinite, unduly broad or unnecessarily burdensome.

A. Since the issues in the Board's proceeding are unusually broad, the categories of material sought were also, of necessity, broad. The complaint charged that a number of ostensibly separate business entities are actually operated as cogs in a single system under the control of the two individual respondents. The specific categories of documents demanded are directly related to this charge. The books and records of the firms and individuals concerned will be particularly significant in determining the correctness of these allegations, since they will show the actual operating methods of the system, and the corporate, business, financial and control relationships among its members. Thus, "[t]he probable materiality of the documents is sufficiently indicated by the descriptions of their subject matter contained in the subpoena" (*Brown v. United States*, 276 U. S. 134, 143).

In enforcing the subpoenas on the ground that the material called for is not "immaterial or irrelevant to the proceedings before the Board," the district court applied the test enunciated in this Court in *Endicott*

Johnson Corp. v. Perkins, 317 U. S. 501, and *Penfield v. Securities and Exchange Commission*, 330 U. S. 585, 592. In any event, groups of documents which cannot be said to be "immaterial or irrelevant" to the issues in an administrative proceeding must necessarily be deemed material and relevant. While the issues in an administrative investigation often are broader than those in a formal complaint case, the same standard of relevancy and materiality governs the enforcement of subpoenas in both types of proceedings.

B. The subpoenas described the documents to be produced "with all of the particularity the nature of the inquiry and the Administrator's [Board's] situation would permit." *Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186, 210, note 48. The subpoenas broke down the material demanded into specific categories, and individual documents were specified wherever the Board had sufficient information to enable it to do so. Each of the subpoenas also covered "a reasonable period of time" (*Brown v. United States*, 276 U. S. 134, 143)—substantially, the period during which the violations were alleged to have occurred. Since the material sought is generally relevant to the inquiry, the subpoenas were not unreasonable, and therefore raise no problem under the Fourth Amendment. Finally, respondents cannot successfully challenge the subpoenas as unusually burdensome, since "[t]here is no harassment when the subpoena is issued and enforced according to law" (*Oklahoma Press case, supra*, p. 217).

C. The district court properly directed production of personal income tax returns of the individual respondents and a third person alleged to be a nominee through whom they have illegally acquired and now maintain control of a number of corporations. Since the complaint charges that a number of separate entities have been operated as a single business, personal income tax returns are relevant because they will show whether income from such entities was treated as coming from several sources or from a single source. Production of relevant personal income tax returns may be directed in private litigation under Rule 34 of the Federal Rules of Civil Procedure; *a fortiori*, a Government agency engaged in vindicating the public interest should have access to such returns.

ARGUMENT

INTRODUCTION

The Civil Aeronautics Act of 1938 gives the Board broad investigatory and enforcement powers. Section 205 (a) empowers the Board to conduct such investigations "as it shall deem necessary" to carry out the provisions of the Act and to perform its powers and duties thereunder. Section 1002 authorizes the Board, upon complaint or upon its own initiative, to institute investigations "with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or any requirement established pursuant thereto," or concerning "any

question [which] may arise" under, or "relating to the enforcement of," the Act. That Section also authorizes the Board to issue an "appropriate order" to compel compliance with any provision of the Act, or requirement thereunder, which it finds to have been violated. See, also, Section 415, which authorizes the Board "to inquire into the management of the business of any air carrier, and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information."

To enable it effectively to carry out its investigatory and enforcement duties, Section 1004 (b) of the Act gives the Board "the power to require by subpoena the attendance and testimony of witnesses and the production of *all* books, papers, and documents *relating to any matter under investigation.*" (Emphasis added.) In case of disobedience to a subpoena, the Board is authorized by subparagraph (c) to "invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of *such* books, papers, and documents under the provisions of this section" (emphasis added), and the court "may * * * issue an order requiring such person to appear before the [Board] * * * and produce books, papers, or documents if so ordered" (Section 1004 (d)).

Although the Act empowers the Board to subpoena "all" documents "relating to any matter under investigation" and to obtain judicial enforcement of subpoenas for "such" documents, the court of appeals held that the district court may order enforcement only if the Board establishes the materiality and relevancy of "each" document subpoenaed, and its possession by the person from whom production is sought. We shall show in Point I that this ruling is contrary to the settled law in this field, that it would most seriously interfere with the efficient conduct of administrative proceedings, and that it would impose a heavy burden upon the courts. We shall argue that the Board is entitled to judicial enforcement of subpoenas *duces tecum* for the production of groups of documents upon a showing that the material sought is "not plainly irrelevant" or is "generally relevant" to the administrative proceedings, and that it is not required to show either the relevaney or materiality of individual documents, or their possession by the person to whom the subpoena is directed. We shall also urge that, contrary to the view of the court below, the Board is not required to exercise its statutory authority to inspect air carrier records prior to issuing subpoenas for such records. In Point II, we shall argue that the district court applied the correct principles when it directed enforcement of the subpoenas involved in this case.

I

IN ORDER TO OBTAIN JUDICIAL ENFORCEMENT OF ADMINISTRATIVE SUBPOENAS *DUCES TECUM* FOR PRODUCTION OF GROUPS OF DOCUMENTS, THE BOARD IS NOT REQUIRED TO ESTABLISH THAT EACH OF THE DOCUMENTS IS RELEVANT AND MATERIAL AND IN THE POSSESSION OF THE PERSON TO WHOM THE SUBPOENA IS DIRECTED, BUT ONLY THE GENERAL RELEVANCY OF THE CATEGORIES OF DOCUMENTS INVOLVED

A. THE BOARD IS NOT REQUIRED TO SHOW THE RELEVANCY AND MATERIALITY OF EACH DOCUMENT SUBPOENAED

1. With the exception of the decision below, and two other recent decisions by the same court,^{*} we know of no appellate case holding that judicial enforcement of a subpoena *duces tecum* for production of groups of documents requires a showing of the relevancy and materiality of each individual document covered by the subpoena. On the contrary, this Court consistently has enforced or upheld subpoenas *duces tecum* designating documents by broad classes upon a general showing that "the documents sought are relevant to the inquiry." *Oklahoma Press*

* *Hubner v. Tucker*. (No. 14704, revised opinion of January 30, 1957); *Local 174, etc. v. United States*. (No. 14746, November 8, 1956, 56-1 USTC (CCH) ¶ 9136). Judge Fee wrote the opinion of the court in both cases. But cf. *Boren v. Tucker*, 239 F. 2d 767.

Publishing Co. v. Walling, 327 U. S. 186, 209; *Consolidated Rendering Co. v. Vermont*, 207 U. S. 541; *Wheeler v. United States*, 226 U. S. 478; *Brown v. United States*, 276 U. S. 134; *Endicott Johnson Corp. v. Perkins*, 317 U. S. 501; *Penfield Company v. Securities and Exchange Commission*, 330 U. S. 585, 591, 592; see *United States v. Morton Salt Co.*, 338 U. S. 632, 652.¹ Similarly, courts of appeals, including the court below in at least two earlier cases, have directed enforcement upon such a showing. *Newfield v. Ryan*, 91 F. 2d 700, 702-703 (C. A. 5), certiorari denied, 302 U. S. 729; *Hagen v. Porter*, 156 F. 2d 362 (C. A. 9), certiorari denied, 329 U. S. 729; *Mines and Metals Corp. v. Securities and Exchange Commission*, 200 F. 2d 317 (C. A. 9); *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389, 392 (C. A. 10). In those cases which involved administrative subpoenas (see note 7, *supra*), the statutory provisions governing the scope of the subpoena power were, with one exception, substantially the same as those in the case at bar.²

¹ The *Consolidated Rendering*, *Wheeler* and *Brown* cases involved grand jury subpoenas, and the question of their validity arose in contempt proceedings resulting from non-compliance rather than directly in enforcement proceedings. However, the settled limitations on the scope of inquiry into the validity of such subpoenas (see *Blair v. United States*, 250 U. S. 273) are equally applicable to administrative subpoenas. *Oklahoma Press* case, *supra*, p. 216; *United States v. Morton Salt Co.*, 338 U. S. 632, 642-643.

² The *Endicott Johnson* case involved Section 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2038, 41 U. S. C. 39), which authorizes the Secretary of Labor to issue "orders requiring the attendance and testimony of witnesses and the pro-

In the *Endicott Johnson* case, *supra*, the subpoena called for production of “[a]ll time cards, time books, employees' wage statements and pay-roll records showing the hours worked each day and each week by, and the wages paid each pay period to, persons employed by the Endicott Johnson Corporation” in specified “factories or departments” and for specified periods ranging from 3 to 23 months (Record on Appeal, No. 142, October Term, 1942, pp. 8-9). In holding that

duction of evidence under oath.” In case of refusal to comply, the district court is empowered to require any person to “produce evidence if, as, and when ordered, and to give testimony relating to the matter under investigation or in question.” The *Oklahoma Press* case dealt with the subpoena power of the Secretary under Section 9 of the Fair Labor Standards Act (52 Stat. 1065, 29 U. S. C. 209), which makes applicable to him the enforcement provisions of the Federal Trade Commission Act (38 Stat. 722, 15 U. S. C. 49). These provisions give the Trade Commission the “power to require by subpoena *** the production of all such documentary evidence relating to any matter under investigation,” and empower the district court, in case of disobedience, to require persons subpoenaed “to produce documentary evidence if so ordered, or to give evidence touching the matter in question.” The *Penfield*, *Newfield*, *McGarry* and *Mines and Metals* cases all involved Sections 19 and 22 of the Securities Exchange Act of 1933 (48 Stat. 85, 86, 15 U. S. C. 77s, 77v), which respectively authorize the Securities and Exchange Commission to require by subpoena “the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry,” and the district court to require any persons so subpoenaed “to produce documentary evidence if so ordered, or there to give evidence touching the matter in question.”

The exception is *Hagen v. Porter*, which involved Section 202 of the Emergency Price Control Act, 56 Stat. 30, 50 U. S. C. Appendix 922 (1946 edition). That section authorized the Price Administrator by subpoena to require any person “to appear and produce documents.”

the court of appeals had properly directed enforcement of the subpoena, this Court ruled (p. 509) :

The evidence sought by the subpoena was not plainly incompetent or irrelevant to any lawful purpose of the Secretary [of Labor] in the discharge of her duties under the Act, and it was the duty of the District Court to order its production for the Secretary's consideration.

Similarly, in the *Oklahoma Press* case, *supra*, the subpoena, which this Court upheld on the ground that "the documents sought are relevant to the inquiry," called for the production of

All of your books, papers and documents showing the hours worked by and wages paid to each of your employees between October 28, 1938, and the date hereof [October 14, 1943 (Record on Appeal, No. 61, October Term, 1945, p. 11)], including all pay roll ledgers, time sheets, time cards and time clock records, and all your books, papers and documents showing the distribution of papers outside the State of Oklahoma, the dissemination of news outside the State of Oklahoma, the source and receipt of news from outside the State of Oklahoma, and the source and receipt of advertisements of nationally advertised goods [p. 210, note 46].

Compare *Cudahy Packing Co. v. Holland*, 315 U. S. 357, 363, where the Court, in holding that the Administrator of the Wage and Hour Division of the Department of Labor had no authority to delegate to his subordinates his statutory power under the Fair Labor Standards Act to sign and issue a subpoena *duces tecum*, pointed out that under the Act "the subpoena

may, as in this case, be used to compel production at a distant place of practically all of the books and records of a manufacturing business, covering considerable periods of time.””

The standard of relevancy varies “in relation to the nature, purposes and scope of the inquiry.” *Oklahoma Press* case, *supra*, p. 209. Thus, enforcement has been directed or approved upon a showing that the material sought is “not plainly incompetent or irrelevant to any lawful purpose of the agency” (*Endicott Johnson* case, *supra*; see, also, *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389, 392 (C. A. 10)); that it is not “irrelevant to its [the agency’s] statutory functions” (*Penfield* case, *supra*, p. 592); that it “related to the subject of inquiry” (*Consolidated Rendering Co. v. Vermont*, 207 U. S. 541, 554); that it “relate[s] to or touch[es] the matter under investigation * * *” (*Oudahy Packing Co. v.*

* Respondents may argue, as they did in the court of appeals, that the *Endicott Johnson* and *Oklahoma Press* cases are distinguishable on the ground that the principal issue there involved in the administrative proceedings was whether the Act was applicable to the companies, and not whether they had violated it. But in both cases the material subpoenaed was pertinent to the issue of violation as well as that of coverage. *Endicott Johnson* case, *supra*, pp. 508-509; *Oklahoma Press* case, *supra*, p. 189. The coverage issue arose because the companies had resisted enforcement in the district court on the ground, *inter alia*, that the Act was not applicable to them. This Court held (1) that the question of coverage initially was for the agency, not the district court, to decide; and (2) that since the material subpoenaed was broadly relevant to matters which the agency had authority to investigate, i. e., coverage and violation, the agency was entitled to enforcement.

National Labor Relations Board, 117 F. 2d 692, 694 (C. A. 10)); that it is "probably relevant" to a lawful investigation (*Smith v. Porter*, 158 F. 2d 372, 374 (C. A. 9), certiorari denied, 331 U. S. 816); that it "was not shown to be plainly incompetent or irrelevant" (*Jackson Packing Co. v. National Labor Relations Board*, 204 F. 2d 842, 843 (C. A. 5)); or that the "subpoenas show on their face the probable materiality of the documents sought" (*Hagen v. Porter*, 156 F. 2d 362, 365 (C. A. 9), certiorari denied, 329 U. S. 729). However the test is phrased, this is clear: the requisite showing of relevancy and materiality applies only to the categories of documents sought, and need not be made in relation to each of the individual documents comprising each category.

In *Consolidated Rendering Co. v. Vermont*, 207 U. S. 541, this Court upheld a state court judgment holding a corporation in contempt for refusing to obey a grand jury subpoena calling for the production of various books and records covering a 34-month period. In rejecting the contention that the subpoena was too broad, the Court stated (p. 554):

But unless it can be said that the court or grand jury never has any right to call for all the books and papers, or correspondence, between certain dates and certain persons named, in regard to a complaint which is pending before such court or grand jury, we think the objection here made is not well founded. We see no reason why all such books, papers and correspondence which related to the subject of inquiry, and were described with reasonable

detail, should not be called for and the company directed to produce them. Otherwise the State would be compelled to designate each particular paper which it desired, which presupposes an accurate knowledge of such papers, which the tribunal desiring the papers would probably rarely, if ever, have.

No less pertinent is this Court's statement in *United States v. Morton Salt Co.*, 338 U. S. 632, 642; "Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry."

Questions as to the relevancy and materiality of individual documents first become ripe for determination when the documents are offered in evidence at the administrative hearing; they are not ripe when the district court is called upon, preliminarily, to enforce subpoenas covering groups of documents. Cf. *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44; *Nelson v. United States*, 201 U. S. 92, 114. Ordinarily, the materiality or relevancy of particular documents can be determined only in the factual context of the hearing as it develops. "Very often the bearing of information is not susceptible of intelligent estimate until it is placed in its setting, a tile in the mosaic." *In re Edge Ho Holding Corporation*, 256 N. Y. 374, 381. This vital practical consideration lies at the root of the settled rule that enforcement of administrative subpoenas *duces tecum* covering

groups of documents requires only a showing of the general relevancy of the material sought.¹⁰

Any irrelevant or immaterial documents which the Board's counsel may offer in evidence presumably will be excluded by the examiner, or by the Board on appeal from his initial decision. Moreover, reliance by the Board on improper evidence can be fully challenged upon judicial review of any final order which the Board may enter against respondents. The ruling of the court of appeals therefore cannot be justified as designed to protect respondents from injury resulting from possible admission of improper evidence in the administrative record.

The rule that courts will enforce administrative subpoenas calling for groups of documents which are generally relevant (or not plainly irrelevant) does not mean, as the court of appeals suggested (R. 172), that the district court is "required to rubberstamp with approval the administrative subpoenas." To an application for enforcement of a subpoena, "appropriate defence may be made." *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 49. The application

¹⁰ Even in the case of a subpoena *duces tecum* issued during the trial of a criminal case, it is sufficient that the Government attorney assert that the documents demanded are material; the question of materiality "cannot be determined in advance" but is to be determined when the documents "come to be offered." *United States v. Babcock*, 94 Fed. Cas. 908, 909 Case No. 14,484 (C. C., E. D. Mo.). For a like ruling on a subpoena *duces tecum* issued in the trial of civil antitrust cases, see *United States v. Terminal Railroad Ass'n*, 148 Fed. 486, 489 (C. C., E. D. Mo.). Cf., also, *United States v. United States District Court*, 238 F. 2d 718, 719-720 (C. A. 4), certiorari denied *sub nom. Valley Bell Dairy Co. v. United States*, 352 U. S. 981.

may properly be resisted on the ground that the subpoena is unduly vague or unreasonably burdensome (*Hale v. Henkel*, 201 U. S. 43); that the hearing is not of the kind which the statute authorizes (*Harriman v. Interstate Commerce Commission*, 211 U. S. 407); that it would violate a personal privilege of the witness, like that against self-incrimination (cf. *Boyd v. United States*, 116 U. S. 616); or that the subpoena was not issued by a person authorized to do so (*Cudahy Packing Co. v. Holland*, 315 U. S. 357). Furthermore, enforcement may always be opposed on the ground that the evidence sought is plainly irrelevant to any lawful subject of inquiry. See *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 479. Thus, there is ample scope in the administrative proceeding for the district court to exercise its discretion to protect against the arbitrary use of the subpoena power. But, in the absence of any showing of such arbitrariness (and none has been made in the instant case, see Point II, *infra*), the Government is entitled to enforcement.¹¹

Nothing in the legislative history of Section 1004 of the Civil Aeronautics Act suggests that Congress,

¹¹ The fact, relied on by the court of appeals (R. 171), that the filing of a petition for enforcement of an administrative subpoena institutes a "case or controversy" under the Constitution (*Interstate Commerce Commission v. Brimson*, 154 U. S. 447), does not mean that such case or controversy involves the relevancy of each document. The Board's petition for enforcement alleged only that the "books, papers and documents required to be produced by said subpoenas * * * are, relevant and material to the prosecution of the proceeding" before the Board (R. 12), and the "case or controversy" thus instituted related only to the general relevancy of such material.

when it authorized the Board "to require by subpoena * * * the production of all books, papers and documents relating to any matter under investigation," intended to give the Board a narrower subpoena power than that possessed by other agencies. On the contrary, we think that this broad language reflects a Congressional intent that the Board, like other agencies, is entitled to judicial enforcement of its subpoenas *duces tecum* upon showing that the categories of material called for are generally pertinent to the inquiry.

2. Requiring the Board to show the relevancy and materiality of each document in order to obtain judicial enforcement of a subpoena *duces tecum* would contravene the requirements of "practicable administrative procedure" (*Morgan v. United States*, 298 U. S. 468, 481). For such a practice would turn many subpoena enforcement proceedings into virtually full dress hearings on the merits, both before the agency and in the courts. The result would be seriously and needlessly to handicap and delay administrative agencies in effectively exercising the powers which Congress has conferred upon them for obtaining information and, at the same time, to impose heavy burdens upon the courts.

Under the procedure specified by the court of appeals, the Board, before issuing any subpoenas, first would be required to "take testimony" to determine the existence and location of the documents, and then, in the exercise of its statutory power of inspection, examine, photograph and copy "all the docu-

ments * * * without regard to materiality and relevancy" (R. 170). If, after such hearing and inspection, the Board finds that the existence of other documents "relevant and material" to the issue is "probable," "then again a witness can be called and examined regarding these features" (R. 171). Thus, there would be a series of protracted hearings, conducted at the outset of an administrative proceeding and extending over possibly many months, in which the agency would be required to ascertain the existence, and investigate the relevancy, of perhaps hundreds, or even thousands, of documents. Moreover, since persons who refuse to comply with administrative subpoenas are equally unlikely to cooperate in aiding the preparation of such subpoenas, the agency frequently might require judicial aid in compelling preliminary testimony as to the existence and location of documents, and in securing their inspection. In short, years might elapse before the agency could even issue its subpoenas.

The actual enforcement proceedings in the district court would be almost equally protracted. For, assuming that the agency could demonstrate the relevancy and materiality of a large number of individual documents prior to the administrative hearing (but see *supra*, p. 23), the time required to do so would be substantial. The district court would apparently be obliged to consider, piece by piece, paper by paper, the disputes as to what should be yielded. Finally, if the subpoenas were at last enforced, questions as to

the relevancy and materiality of individual documents would still not be laid to rest. They might be raised anew upon the subsequent offer of such documents in evidence.

Mr. Justice Cardozo, while Chief Judge of the New York Court of Appeals, graphically warned of the dangers to the administrative process which would result if courts attempted to determine the relevancy of particular items of evidence when called upon to enforce subpoenas:

Investigation will be paralyzed if arguments as to materiality or relevance, however appropriate at the hearing, are to be transferred upon a doubtful showing to the stage of a preliminary contest as to the obligation of the writ. Prophecy in such circumstances will step into the place that description and analysis may occupy more safely. Only where the futility of the process to uncover anything legitimate is inevitable or obvious must there be a halt upon the threshold.¹²

The practical consequence of the enforcement procedures specified by the court of appeals would be to deny agencies the authority to subpoena materials and records by general description or category. That power has been repeatedly upheld by this Court, and its availability is essential if administrative agencies and the courts are to function effectively in their coordinate spheres.

¹² *In re Edge Holding Corporation*, 256 N. Y. 374, 381-382.

B. THE BOARD DOES NOT HAVE TO SHOW THAT THE DOCUMENTS ARE IN THE POSSESSION OR UNDER THE CONTROL OF THE PERSON TO WHOM THE SUBPOENA IS DIRECTED

The court below further erred, we believe, in holding that the Board, in order to obtain enforcement, was required to show that the documents are in the possession or under the control of the persons from whom production is sought. Although lack of possession or control may be asserted, in appropriate circumstances, as a ground for opposing enforcement, the agency is not required to show as part of its affirmative case that "the documentary evidence called for [is] * * * in the possession or under the control of the witness." *Nelson v. United States*, 201 U. S. 92, 115; *Hammond Packing Co. v. Arkansas*, 212 U. S. 322, 347.

Where, as here, production is sought of corporate or firm records, or of personal records of individuals, it may properly be presumed that the appropriate officers of such firms, or the individuals whose personal records are sought, do possess them. Nor is it unreasonable to place the burden of showing lack of possession upon the persons who have direct knowledge of that fact. Significantly, although respondents filed a motion to quash with the Board (R. 64), and a full answer (R. 68-74) to the Board's petition for enforcement in the district court, they did not contend in either document that they do not possess or control the subpoenaed material. Cf. *United States*

v. Morton Salt Co., 338 U. S. 632, 653-654; *Nilva v. United States*, No. 37, this Term, decided February 25, 1957.

If respondents do not have the documents, and if "it does not appear that they have acted in bad faith or dispossessed themselves of books and records for the purpose of avoiding their production, they will not be in contempt for failure to produce books and records not within their possession." *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389, 392-393 (C. A. 10). Requiring the agency to show possession and control of the documents subpoenaed would serve no valid purpose, and would further hinder and delay the conduct of administrative proceedings. See *supra*, pp. 26-28. The ability [of respondents] to produce such books and records can best be inquired into initially at the hearing before the Commission [Board] and, if necessary, in further proceedings before the district court." *McGarry* case, *supra*, p. 393.

The court below previously had held, in affirming a district court order directing enforcement of subpoenas *duces tecum*, that it was immaterial that one of the persons to whom a subpoena was directed had "filed an affidavit alleging that he has neither custody nor control of all the documents here sought. This is a matter not relevant to this proceeding. The proper time to decide such an issue is when the order of the district court is disobeyed." *Mines and Metals Corp. v. Securities and Exchange Commission*, 200 F. 2d 317, 321; cf. *Hagen v. Porter*, 156 F. 2d 362, 366

(C. A. 9), certiorari denied, 329 U. S. 729. We submit that that prior ruling, and not the ruling in the instant case, was correct.

O. THE BOARD IS NOT REQUIRED TO EXERCISE ITS STATUTORY POWER TO INSPECT AIR CARRIER RECORDS PRIOR TO ISSUING SUBPOENAS FOR SUCH RECORDS

The court below stated (R. 170) that prior to issuing a subpoena the Board should not only "take testimony" to determine the existence and location of documents but should also, in the exercise of its statutory power of inspection of air carrier records and properties under Section 407 (e) of the Act, examine, photograph and copy "all the documents." Although this procedure was prescribed because of the court's erroneous view that the Government is required to show the relevancy of individual documents, it also involves an erroneous legal premise. For we think it clear that the Board is not required to exercise its inspection power before exercising its subpoena power.

Nothing in Section 1004 (b) even remotely suggests that the Board's broad power "to require by subpoena the * * * production of all books, papers, and documents relating to any matter under investigation" is qualified by, or depends upon the prior exercise of, the Board's authority to inspect air carrier records. On the contrary, the two powers are separate and independent of each other. See *Westside Ford, Inc. v. United States*, 206 F. 2d 627, 629-630, 634 (C. A. 9); *Porter v. Gantner & Mattern Co.*,

156 F. 2d 886, 889-890 (C. A. 9). Almost invariably, the Board has used its inspection power in its routine examinations of carrier books and records, and has exercised its subpoena power in other types of proceedings.

Inspection of a carrier's records, like the other burdensome practices prescribed by the court of appeals, would serve no useful purpose and would unnecessarily delay administrative proceedings (see *supra*, pp. 26-28). Moreover, the Board's inspection authority extends only to the records of air carriers and persons having control of, or affiliated with, air carriers, and it would not cover all records which the Board may require in its various proceedings, or, indeed, all the records sought in this case. Furthermore, there is no reason to suppose that persons who refuse to comply with administrative subpoenas would be any more willing to permit the Board to inspect their records. Cf. *United States v. United Distillers Products Corp.*, 156 F. 2d 872 (C. A. 2). The Board, therefore, would probably have to invoke the aid of the district court, pursuant to Section 1007 (a) of the Act, to compel compliance with its inspection order.

II

THE DISTRICT COURT PROPERLY ENFORCED THE SUBPOENAS

As we have shown in Point I, *supra*, the Board may issue subpoenas calling for production of documents which are described by broad categories; and it is entitled to enforcement of such subpoenas upon showing that the material sought is generally relevant (or

not plainly irrelevant), without having to show either the relevancy of individual documents or their possession or control by the persons to whom the subpoena is directed. "Necessarily * * * relevancy * * * [is] variable in relation to the nature, purposes and scope of the inquiry" (*Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186, 209). Thus, the breadth of the issues in the administrative proceeding determines the permissible reach of the subpoena power. Since the issues in the Board proceeding here involved are unusually broad, the categories of material sought were also, of necessity, broad.

We shall show that the documents called for by the subpoenas were not "plainly incompetent or irrelevant to any lawful purpose of the Secretary [Board] in the discharge of her [its] duties under the Act" (*Endicott Johnson Corp. v. Perkins*, 317 U. S. 501, 509), but, on the contrary, were clearly "relevant to the inquiry" (*Oklahoma Press case, supra*); that the subpoenas are not vague or indefinite, or unduly broad or unnecessarily burdensome; and that it was therefore "the duty of the District Court to order * * * production" of the material "for the Secretary's [Board's] consideration" (*Endicott Johnson case, supra*).

A. The basic issues in the Board's administrative proceeding are whether the two individual respondents have acquired control of two airlines and a number of affiliated companies, and whether they have operated a scheduled airline service, in violation of the Civil Aeronautics Act and the Board's regula-

tions. The complaint charged that a number of ostensibly separate business entities are actually operated as cogs in a single system under the control of the two individual respondents. In order to ascertain the correctness of these allegations, the books and records of the firms and individuals concerned will be particularly significant, since they will show the actual operating methods of the system, and the corporate, business, financial and control relationships among its members. Moreover, the books and records may be significant not only for what they affirmatively show, but also for what they do not show.

The specific categories of documents demanded are directly related to the charges in the complaint. For example, financial, corporate and personnel records, and data relating to aircraft operations, assignment of flight personnel and ticketing practices are plainly relevant to the allegations that the individual respondents acquired and are exercising control of the carriers "through nominees or stock ownership, control of property, employees and equipment, leasing of aircraft, control of traffic solicitation and handling, financial management and control and agreements and arrangements of various types" among respondents (R. 24-25); and that the carriers "have made and maintained agreements, and participated in arrangements, between themselves and the other respondents named in this complaint through which said carriers have held out and have operated regular and frequent services in air transportation between designated points collectively and at various times individually"

(R. 22). The material sought from respondents' advertising agency (R. 51-53; see R. 8) is relevant with respect to the allegations that respondents have held themselves out as offering a regular service and that they have operated and advertised air service under a single trade name, "Skycoach" (R. 27-29). The information sought with respect to tickets and ticketing practices is relevant with respect to the latter allegation, and also with respect to the allegations that respondents have violated the Board's ticketing regulations (R. 30-32) and have operated a regular service.

In sum, "[t]he probable materiality of the documents is sufficiently indicated by the descriptions of their subject matter contained in the subpoena" (*Brown v. United States*, 276 U. S. 134, 143). The allegations in the Board's complaint (see R. 143) and in its petition for enforcement further indicated the relevancy of the material sought. Respondents' general allegation, in their answer to the Board's petition for enforcement in the district court, that the documents sought "are not material to the issues" in the administrative proceeding (R. 72), did not rebut the Board's showing of materiality." *Kilgore Nat. Bank v. Federal Petroleum Board*, 209 F. 2d 557, 560 (C. A. 5).

"The statements in the affidavit which respondent Ida Mae Hermann filed with the Board that "[i]t is difficult to imagine" the relevancy of certain data contained in aircraft maintenance logs, and that "most of the documents sought have no conceivable relation to the *** proceeding" (R. 114-115) were no more persuasive.

Of course, short of making "an examination of all of the documents and things"—which, as the district court correctly pointed out (R. 143; see Point IA, *supra*), it "[w]as not called upon to do at this stage of the proceedings"—the court could do no more than determine the general relevancy of the material. The district court, in stating that it could not "say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board," applied the test enunciated by this Court in the *Endicott Johnson* and *Penfield* cases, *supra*, p. 21. But, in any event, we submit that groups of documents which cannot be said to be "immaterial or irrelevant" to the issues in an administrative proceeding must necessarily be deemed "material and relevant." In determining whether a subpoena for production of groups of documents should be enforced, the distinction between "relevant" and "not irrelevant" becomes one of semantics, not substance.

The court of appeals suggested (R. 172) that the "lines" for enforcement of administrative subpoenas "are much more sharply drawn" in "an adverse enforcement proceeding" than in "an administrative investigatory proceeding." If the court was merely stating that, since the issues in an investigation often are broader than those in a formal complaint case, the scope of the subpoena power may be correspondingly broader in the former, we have no disagreement. But if the court is suggesting that a stricter standard governs enforcement of subpoenas issued in adversary

proceedings than those issued in investigations, we think it is in error.¹⁴

The act does not so differentiate between the two types of proceedings; rather, it authorizes the Board to subpoena documentary material "relating to any matter under investigation." Nor do the decisions of this Court upon which we have relied (see *supra*, pp. 17-21) draw any such distinction. Concededly, the subpoenas involved in most of those cases were issued in preliminary investigations rather than in formal complaint cases. However, enforcement was not granted for that reason, but on the broader ground that where an administrative agency is acting within

¹⁴ Adversary proceedings in the courts probably tend to be more formal than adversary proceedings before administrative agencies. Yet, the utilization, in civil suits, of the pre-trial discovery procedures authorized by the Federal Rules of Civil Procedure is not circumscribed in practice by detailed requirements comparable to those imposed by the court of appeals in the instant case. On the contrary, the dominant assumption has been that the discovery provisions are to be liberally administered so that there will be ready access to information which is or may prove to be relevant. See *Hickman v. Taylor*, 329 U. S. 495, 507. The moving party, to be sure, must show "good cause" (Rule 34) when he seeks production of the books and records of his adversary. But this certainly does not mean that there must be a series of pre-trial trials to determine whether each item sought will actually prove specifically relevant to issues which may emerge at the trial. See *United States v. United States Alkali Export Association*, 7 F. R. D. 256 (S. D. N. Y.); *Hawaiian Airlines v. Trans-Pacific Airlines*, 8 F. R. D. 449 (D. Hawaii); cf. *Societe Internationale, etc. v. Clark*, 9 F. R. D. 263 (D. D. C.) affirmed, *sub nom. Societe Internationale, etc. v. Brownell*, 225 F. 2d 532 (C. A. D. C.), certiorari denied, 350 U. S. 937, directing production of approximately 70,000 documents described by broad categories.

the scope of its statutory authority (as the Board concededly is doing here), it is entitled to the production of all documentary material which is broadly relevant to the performance of its duties. Furthermore, the material which was subpoenaed in the investigations in the *Endicott Johnson* and *Oklahoma Press* cases (see *supra*, pp. 19-20) would also have been relevant in any formal adversary proceedings which the Secretary subsequently might have instituted. In the instant case, as we have shown, the material subpoenaed plainly was relevant to the issues in the administrative proceeding, and its relevance is no less because the inquiry has ripened from an informal investigation into a formal adversary proceeding.

B. Respondents may argue, as they did before the Board and the lower courts, that the subpoenas are vague and indefinite, unduly broad, and unnecessarily burdensome. We submit that they are not.

1. The subpoenas described the documents to be produced "with all of the particularity the nature of the inquiry and the Administrator's [Board's] situation would permit." *Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186, 210, note 48. Since the Board itself could not know precisely what books and records were kept by respondents and by the other persons to whom the subpoenas were directed, the subpoenas necessarily could only "specif[y] * * * with reasonable particularity, the subjects to which the documents * * * relate." *Brown v. United States*, 276 U. S. 134, 143. But the subpoenas broke down the material demanded into specific categories (see, e. g., the

various subdivisions of subjects in the subpoenas issued to respondents Ida Mae and Irving E. Hermann, R. 40-42, 44-46), and "the description contained in the subpoena was sufficient to enable * * * [the recipient] to know what particular documents were required and to select them accordingly." *Brown v. United States, supra.* Furthermore, the subpoenas specified individual documents wherever the Board had sufficient information to enable it to do so. See R. 42-43, 50, calling for the production of specified "Flight, auditor and agent coupons" on designated flights.

Each of the subpoenas also "specifies a reasonable period of time." *Brown v. United States, supra.* The various violations charged in the Board's complaint were alleged to have taken place between December 1, 1951, and October 14, 1954, the date of issuance (R. 22-34). The subpoenas called for documents covering the years 1952 through 1954 and, in some instances, through February or March 1955, the date of their issue (R. 39-60), i. e., the period involved in the complaint. Plainly, the subpoenas were properly limited in time as well as in scope.

Since, as we have previously shown, the material sought is generally relevant to the inquiry, the subpoenas were not unreasonably broad. Respondents' contention (R. 64, 72) that the subpoenas constituted an unreasonable search and seizure has no substance, since compulsory compliance with a reasonable subpoena *duces tecum* does not violate the Fourth Amendment. *Hale v. Henkel*, 201 U. S. 43, 76; *Wilson v. United States*, 221 U. S. 361, 376; *Oklahoma Press case, supra*, pp. 195-196, 208-209.

Nor can respondents successfully challenge the subpoenas as burdensome. "There is no harassment when the subpoena is issued and enforced according to law." *Oklahoma Press* case, *supra*, p. 217; *Fleming v. Montgomery Ward*, 114 F. 2d 384 (C. A. 7), certiorari denied, 311 U. S. 690; *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389 (C. A. 10); *Westside Ford v. United States*, 206 F. 2d 627 (C. A. 9). Although the subpoenas called for production of many documents, the number was not unduly large in the light of the complex issues before the Beard. Cf. *Cudmore v. Bowles*, 145 F. 2d 697, 699 (C. A. D. C.), certiorari denied, 324 U. S. 841, upholding enforcement of a subpoena covering 20,000 invoices. The district court took pains to avoid any undue burden which might be put on respondents if they were "deprived of all of their books and records at the same time," by staggering the return dates of the subpoenas (R. 143).

C. Among the documents directed to be produced pursuant to the subpoenas were certain personal income tax returns. The court of appeals directed the district court to consider on remand whether the subpoenas, insofar as they require production of those returns, invade the "privacy of third persons" because such documents "relate entirely to their personal affairs" (R. 172-173). But the persons from whom such returns are sought are not strangers to the case, and the returns plainly are relevant to the issues in the proceeding. Two of the persons from whom the returns are sought (the Hermanns) are

respondents in the Board's proceeding and the third person (Robert M. Smith) is alleged to be a nominee through whom the Hermanns have illegally acquired and now maintain control of a number of corporations (R. 14-35). Since one of the charges in the complaint is that the individual respondents have operated a number of separate entities as a single business, their personal income tax returns obviously are relevant as showing whether income from such entities was treated as coming from several sources or from a single source. If, as respondent Ida Mae Hermann contended in an affidavit filed with the district court in opposition to the petition for enforcement, she would be "greatly damaged and injured in her personal financial affairs and will be caused extreme embarrassment" should "her personal financial affairs [be] revealed in a public hearing" (R. 114), she could have filed with the Board an application for confidential treatment of her returns.¹³ Indeed, she may still file such an application.

The court below previously had upheld an order enforcing an administrative subpoena for production, *inter alia*, of personal income tax returns. *Smith v. Porter*, 158 F. 2d 372, 373 (C. A. 9), certiorari denied, 331 U. S. 816. The weight of authority appears to be that, under Rule 34 of the Federal Rules of Civil

¹³ Section 1104 of the Act authorizes the Board, upon the filing of a written objection, to withhold from public disclosure any information obtained by it whose disclosure, in its judgment, would adversely affect the interest of the objector and which is not required by the public interest.

Procedure, production of relevant personal income tax returns may be directed in private litigation. *June v. Peterson Co.*, 155 F. 2d 963, 967 (C. A. 7); *Konczakowski v. Paramount Pictures*, 19 F. R. D. 361, 362 (S. D. N. Y.) and cases there cited; see *Mullen v. Mullen*, 14 F. R. D. 142, 143 (D. Alaska). *A fortiori*, a Government agency engaged in vindicating the public interest should have access to such returns. The district court correctly ordered production of copies of the tax returns.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded with directions to affirm the order of the district court enforcing the subpoenas.

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MARCH 1957.

APPENDIX

The Civil Aeronautics Act of 1938, as amended, 52 Stat. 977, 49 U. S. C. 401 *et seq.*, provides in pertinent part as follows:

SEC. 205. (a) The Authority [Board] is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out such provisions and to exercise and perform its powers and duties under this Act. [49 U. S. C. 425]

* * * * *

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority [Board] authorizing such air carrier to engage in such transportation: * * * [49 U. S. C. 481]

* * * * *

SEC. 407. * * *

(e) The Authority [Board] shall at all times have access to all lands, buildings, and equipment of any carrier and to all accounts, records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers; and it may employ special agents or auditors, who shall have authority under the orders of the Authority [Board] to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda.

The provisions of this section shall apply, to the extent found by the Authority [Board] to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5 (8) of the Interstate Commerce Act, as amended. [49 U. S. C. 487]

* * * * *

SEC. 408. (a) It shall be unlawful unless approved by order of the Authority [Board] as provided in this section—

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

(2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection. [49 U. S. C. 488]

* * * * *

SEC. 415. For the purpose of exercising and performing its powers and duties under this Act, the Authority [Board] is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information. [49 U. S. C. 495]

* * * * *

SEC. 1002. (a) Any person may file with the Authority [Board] a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Authority [Board] to investigate the matters complained of. Whenever the Authority [Board] is of the opinion that any complaint does not state facts which warrant an investigation or action on its part, it may dismiss such complaint without hearing.

(b) The Authority [Board] is empowered at any time to institute an investigation, on its own initiative, in any case and as to any matter or thing concerning which complaint is author-

ized to be made to or before the Authority [Board] by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The Authority [Board] shall have the same power to proceed with any investigation instituted on its own motion as though it had been appealed to by complaint.

(c) If the Authority [Board] finds, after notice and hearing, in any investigation instituted upon complaint or upon its own initiative, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Authority [Board] shall issue an appropriate order to compel such person to comply therewith. [49 U. S. C. 642]

* * * * *

SEC. 1004. (a) Any member or examiner of the Authority [Board], when duly designated by the Authority [Board] for such purpose, may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Authority [Board]. In all cases heard by an examiner or a single member the Authority [Board] shall hear or receive argument on request of either party.

(b) For the purposes of this act the Authority [Board] shall have the power to require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation. Witnesses summoned before the Authority [Board] shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the United

States, at any designated place of hearing. In case of disobedience to a subpoena, the Authority [Board], or any party to a proceeding before the Authority [Board], may invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section.

(d) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Authority [Board] (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. [49 U. S. C. 644]

* * * * *

SEC. 1007. (a) If any person violates any provision of this Act, or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit issued under this Act, the Authority [Board], its duly authorized agent, or, in the case of a violation of section 401 (a) of this Act, any party in interest, may apply to the district court of the United States, for any district wherein such person carries on his business or wherein the violation occurred, for the enforcement of such provision of this Act, or of such rule, regulation, requirement, order, term, condition, or limitation; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such person, his officers, agents, employees, and representatives, from further violation of such provision of this Act or of such rule, regulation,

requirement, order, term, condition, or limitation, and enjoining upon them obedience thereto. [49 U. S. C. 647]

* * *

SEC. 1104. Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to the provisions of this Act or of information obtained by the Authority [Board], the Administrator, or the Air Safety Board pursuant to the provisions of this Act, stating the grounds for such objection. Whenever such objection is made, the Authority [Board], or the Air Safety Board if the information was obtained by it, shall order such information withheld from public disclosure when, in its judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public. The Authority [Board] is authorized to withhold publication of records containing secret information affecting national defense. [49 U. S. C. 674]

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Supreme Court of the United States

October Term, 1956.

No. 540.

CIVIL AERONAUTICS BOARD, Petitioner,

vs.

IDA MAE HERMANN, et al., Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.

BRIEF FOR RESPONDENTS.

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IN THE
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No. 540.

CIVIL AÉRONAUTICS BOARD, *Petitioner*,
vs.

IDA MAE HERMANN, *et al.*, *Respondents*.

On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.

BRIEF FOR RESPONDENTS.

Questions Presented.

The United States Court of Appeals for the Ninth Circuit has ruled that the trial court in an administrative subpoena enforcement case shall pass on certain judicial questions before the trial court may issue an order enforcing administrative subpoenas. The questions presented are:

Whether the court of appeals has discretion under the circumstances in this case, to require the district court to rule on the following questions:

1. Are the subpoenaed documents relevant and material.
2. Is the demand oppressive and unreasonable.
3. Will the privacy of individuals be invaded if the subpoenas are enforced.

Statute Involved.

Pertinent provisions of the Civil Aeronautics Act of 1938, as amended, 52 Stat. 977, 49 U. S. C. 401, *et seq.*, are set forth in the appendix to Petitioner's Brief, pages 43-48.

Statement.

The Civil Aeronautics Board seeks an order enforcing ten administrative subpoenas *ducus tecum* in this proceeding. The district court ordered the subpoenas enforced. The court of appeals remanded to the district court with instructions to pass upon certain judicial questions before the district court may order enforcement of the subpoenas.

The administrative subpoenas in question were issued by the Board during the course of an administrative enforcement proceeding before a Hearing Examiner of the Board. The administrative proceeding is designated "In the Matter of Great Lakes Airlines, Inc., Docket No. 6908".

The nineteen respondents in Docket No. 6908 consist of two air carriers, Great Lakes Airlines and Currey Air Transport, licensed by the Board to engage in interstate air transportation as irregular air carriers, twelve ticket agencies which engage in the sale of tickets for air transportation, two corporations which are alleged to supply gasoline products and perform banking functions, respectively, for other administrative respondents, Ida Mae Hermann and Irving E. Hermann, individually, and as co-partners engaging in the leasing of aircraft. The issues in Docket No. 6908 relate to alleged violations by the above named administrative respondents of the Civil Aeronautics Act of 1938, as amended (52 Stat. 977, 49

U. S. C. 401 *et seq.*), and the regulations of the Board promulgated thereunder. These alleged violations relate to (1) frequency and regularity of flight operations; (2) acquisition and maintenance of control by Ida Mae Hermann and Irving E. Hermann over Currey Air Transport and the ticket agent respondents without prior Board approval; and (3) various ticketing practices engaged in by the two air carrier respondents. There are no issues relating to air safety in the administrative proceeding.

The Board seeks an order in the administrative proceeding revoking the licenses of Great Lakes and Currey to engage in air transportation and requiring the other administrative respondents to cease and desist from engaging in air transportation directly or indirectly.

The administrative subpoenas are directed to the ten respondents in this proceeding, who are officers or employees of; or independent auditors or advertising agencies performing services for, the respondent companies in Docket No. 6908.

The administrative subpoenas are summarized in the appendix. (*Infra*, pp. 1-4.) Most of the subpoenas cover a period of thirty-eight months.¹ The subpoenas were resisted before the Hearing Examiner who overruled a motion to quash [R. 61]. The Examiner's ruling was affirmed by the Board [R. 61-67]. Respondents continued to resist the subpoenas and the Board initiated this proceeding in the district court by filing a petition to enforce administrative subpoenas [R. 3-13].

¹One subpoena is unrestricted as to time [R. 51-53], while four subpoenas cover a period of thirty-four months commencing in May, 1952 [R. 54-55, 55-56, 58-59, 60].

Respondents raised the following arguments before the district court in resisting the Board's petition for enforcement: (1) the subpoenas are oppressive and unreasonable in scope; (2) compliance with the subpoenas would unduly and unreasonably hamper and interfere with the conduct of business by the administrative respondents; (3) the Board has many of the subpoenaed documents in its possession; (4) the subpoenas call for documents which are neither relevant nor material to the issues in Docket No. 6908; (5) the Board is required to prove that the documents sought are relevant and material to the issues in Docket No. 6908; (6) the subpoenas constitute an unreasonable search and seizure and a general fishing expedition; (7) the subpoenas call for records and documents which relate solely to personal affairs of certain individuals; and (8) the Board should inspect the subpoenaed documents as authorized by statute and limit the subpoenas in view of the other defenses raised [R. 72-73, 109-115].

Affidavits supporting the foregoing contentions were filed with the district court [R. 107-115, 129-142]. The facts alleged in these affidavits were not contradicted by the Board.

The proceedings before the district court were heard entirely on affidavits. Initially, the district court continued the cause on condition that certain of the respondents permit Board representatives to inspect and copy the documents called for in the subpoenas [R. 115-117]. In accordance with this order, six Board representatives inspected and copied the documents called for in these subpoenas during the period April 7 through April 15, 1955 [R. 117-121, 123]. At the resumed hearing, the Board

presented affidavits, without notice to the administrative respondents, which purported to show that respondents had not complied with the inspection order of the district court [R. 117-125]. The district court, without further notice or argument on the merits, ordered the subpoenas enforced exactly as written² [R. 126-129]:

Upon rehearing,³ the district court ordered all of the subpoenas enforced as presented.⁴ The district court stated in its Memorandum for Order [R. 143-144]:

In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all of the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings.

On appeal, the court of appeals remanded and required the district court to pass on designated judicial questions.

The court of appeals found that "the period covered by the documents required under most of the subpoenas is thirty-eight months" and that "the individual subpoenas

²With the exception of the subpoena served upon respondent Leonard Rosen, which was not pressed by the Board [R. 57].

³The counter-affidavits filed by respondents apparently convinced the district court that respondents had complied with the court's inspection order, since the court allowed a rehearing. In these affidavits, respondents urged that they had complied with the inspection order as the basis for a rehearing [R. 129-142].

⁴With the exception of the subpoena served upon respondent Rosen. The court staggered the return dates of the subpoenas [R. 144-146]. This order was stayed pending appeal [R. 154, 161-162].

are comprehensive of practically all records, books and documents of or concerning the companies engaged in Docket No. 6908" [R. 168]. The court of appeals found that the Board had failed to show the relevance and materiality of the documents sought in the administrative subpoenas⁵ and that the Board did not have on file the documents subpoenaed.⁶ The court of appeals held that the district court had failed to pass upon the judicial questions in the case in that the district court had made no findings that any of the subpoenaed documents were relevant or material and had taken no position upon the questions whether the demand was oppressive or unreasonable or whether some subpoenaed documents related entirely to the personal affairs of three of the respondents before this court [R. 170-172]. The district court, on remand, was required to resolve the following questions [R. 173]:

1. Have the documents been sufficiently defined and described in the administrative subpoenas.
2. Are the subpoenaed documents relevant and material.
3. Is the demand oppressive and unreasonable.
4. Will the privacy of individuals be invaded if the subpoenas are enforced.

⁵"It seems to be conceded that there was no showing of relevancy or materiality of the documents sought in the administrative subpoenas at any time during the hearings" [R. 169].

⁶"There was no showing that the Board did not have on file itself the documents sought therein" [R. 169]. The respondents had presented affidavits which demonstrated that some of the subpoenaed documents were on file with the Board [R. 110, 111, 112, 113-114, 133-134, 139].

Summary of Argument.

This argument seeks to establish the proposition that a court in an administrative subpoena enforcement case should pass upon certain judicial questions before it may enforce subpoenas. The subpoenas in question call for a wide variety of documents covering an extensive period of time. The district court enforced the subpoenas because it could not say that the documents called for are "immaterial or irrelevant to the proceedings before the Board" [R. 143]. The court of appeals required the district court on remand to determine whether the Board's demand is oppressive or unreasonable, whether the documents subpoenaed are relevant and material to the issues in the administrative proceeding and whether the privacy of individuals would be invaded unnecessarily if the subpoenas are enforced. The court of appeals held that the district court had failed to pass upon these judicial questions.

The court of appeals has latitude to require the district court to pass upon these judicial questions since the district court failed to discharge the duties and responsibilities of a trial court in a subpoena enforcement case.

It is settled that oppressiveness or unreasonableness of the demand is a proper defense in administrative subpoena enforcement cases. (*Hale v. Henkel*, 201 U. S. 43, 76-77.) We shall describe the variety and extent of the documents called for in the subpoenas and the burden of production. In the course of demonstrating that the

In a Proceeding to Enforce Broad Administrative Subpoenas Duces Tecum, the Court Should Determine Whether the Board's Demand Is Oppressive or Unreasonable, Whether the Subpoenaed Documents Are Relevant and Material and, Where Appropriate, Whether the Privacy of Individuals Will Be Invaded Unnecessarily Before It Enforces the Subpoenas.

- A. The District Court Should Determine Whether the Board's Demand Is Oppressive or Unreasonable.
1. The court of appeals required the district court on remand to rule whether or not the demand contained in the subpoenas is oppressive and unreasonable [R. 173]. These questions can be resolved only by analysis of the subpoenas in the light of the issues in the administrative proceeding. The subpoenas are contained in the Transcript of Record [R. 39-60] and, for convenience, are summarized in the appendix (*infra*, pp. 1-4).

The district court made no findings regarding the scope of the demand. The court of appeals found that "the period covered by the documents required under most of the subpoenas is thirty-eight months" and that "the individual subpoenas are comprehensive of practically all records, books and documents of or concerning the companies engaged in Docket No. 6908" [R. 168].

The subpoenas directed to the officers and employees of the administrative respondents are particularly comprehensive.⁷ We have directed our comments principally

⁷These subpoenas were directed to respondents Ida Mae Hermann [R. 39-43], Irving E. Hermann [R. 43-47], Robert M. Smith [R. 47-50], H. C. Richards [R. 54-55], George Patterson [R. 55-56] and G. D. Thompson [R. 60], and call for documents of Great Lakes Airlines, Currey Air Transport, Air International, Inc., Nevada Aero Trades Company and Great Lakes Airlines Agency.

to the subpoenas calling for the records of Great Lakes Airlines and Currey Air Transport, the two air carrier respondents [R. 39-50, 54-56, 60].

The record shows that considerable documentation is involved in conducting business as an air carrier and that the two named air carriers are required to adhere to the extensive record keeping and reporting requirements of (1) the Civil Aeronautics Administration, with respect to safety and operational matters, and (2) the Board with respect to economic matters [R. 110-112, 133-134, 139]. Great Lakes requires approximately 50 to 75 documents in connection with each flight it operates [R. 110]. Great Lakes also has an extensive maintenance division which performs overhaul and maintenance services upon aircraft operated by Great Lakes and other airline companies [R. 110].

Great Lakes has approximately 75 employees engaged in its flight operations and maintenance activities [R. 109-110]. It can readily be seen that the production of all of the individual personnel and payroll records and vouchers for a period of thirty-eight months calls for a substantial number of documents. The relevance of these records has not been shown. It is particularly difficult to imagine the relevance of personnel records relating to maintenance division mechanics and other employees since there are no issues in this proceeding pertaining to air safety.

Great Lakes issued approximately 2500 tickets per month during the period covered by the subpoenas [R. 111-112]. One subpoena calls for the production of three coupons for each ticket sold during the months of June and November for three years, 1952 through 1954, inclusive.

[R. 40-41]. This one item in one subpoena calls for 45,000 ticket coupons.* Respondents' estimate of the time involved in producing these ticket coupons is ten weeks provided a trained person was devoted to this particular job [R. 111-112]. Currey issued an equal number of tickets and is called upon to produce all of the coupons for tickets sold during the same months as Great Lakes [R. 48].* The Board has merely designated all these ticket coupons as a class and has stated that it requires all of them. No further showing has been made.

Another item contained in the subpoenas which is susceptible to ready analysis is the demand for all cancelled checks and bank statements of five administrative respondents for a thirty-eight month period [R. 40, 44-45, 48]. Great Lakes issued approximately 300 checks per month during this period [R. 111]. Accordingly, more than 11,000 cancelled checks are required of Great Lakes. The estimated number of bank statements and cancelled checks for four administrative respondents is 25,000 items [R. 111]. The Board has not demonstrated why it required all of these cancelled checks (most of which relate to transportations with third parties) to be brought to the hearing room in response to the subpoenas.

*The subpoena also calls for many specified tickets and for the flight, auditor and agent coupon of each ticket requested [R. 41-43]. While the subpoena calls for all copies of tickets actually sold to the public during the months of June and November in each of these three years, the Great Lakes tickets are filed by date of flight. Since many passengers purchase tickets in advance of their flight, it would be necessary to search through the ticket coupons for a period of months following, as well as the months named in the subpoenas [R. 111-112].

*The only flight data of record relates to Los Angeles-New York flights. Currey operated more flights than Great Lakes between these points during the years 1952 through 1954, inclusive [R. 36-38].

Each of the respondent companies in Docket No. 6908 is required to produce all of its general ledgers and all subsidiary books and ledgers and all vouchers, invoices, journals and other supporting documents to the entries in said books and ledgers for a period of thirty-eight months [R. 40, 44, 48]. Great Lakes maintains a fairly elaborate system of books and its files contain supporting information for every ticket sold. Some 200,000 documents would have to be produced in order for three administrative respondents to comply with this phase of the subpoenas and respondents assert that it would require approximately two months to produce all of these documents [R. 111]. The Board has not demonstrated its need for the production of any particular set of books, ledgers or supporting documents or for all of them. The Board cannot dispute respondents' assertion that most of the vouchers, invoices or other supporting documents are unrelated to "any matter in question" which, after all, is neither the "structure nor the commercial history" of the administrative respondents. (*Goodyear Tire & Rubber Co. v. National Labor Relations Board*, 122 F. 2d 450, 453 (C. A. 6).)

Respondents estimate that they would have to search through 1,000,000 documents to locate and segregate the subpoenaed documents [R. 109]. While respondents have made no attempt to estimate the physical bulk of the documents required to be delivered up to the hearing officer, the court of appeals found that "truckloads of records" are involved which "are comprehensive of practically all records, books and documents of or concerning the companies engaged in Docket No. 6908" [R. 168, 170]. Respondents could not conduct their business with-

out the business records called for in these subpoenas [R. 114-115].

The foregoing facts pertaining to the burden of complying with the subpoenas are not challenged by the Board.

2. Oppressiveness or unreasonableness of the demand may be asserted as a defense in a subpoena enforcement case; enforcement will be denied by the courts if this defense is upheld. (*Hale v. Henkel*, 201 U. S. 43, 76-77; *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 305-307; *Bank of America v. Douglas*, 105 F. 2d 100, 106-108 (C. A. D. C.).)¹⁰ The allowable breadth of administrative subpoenas is committed, not to administrative agencies, but to the courts. If the demand is "in any respect . . . unreasonable," appropriate defense may be made "surrounded by every safeguard of judicial restraint." (*Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186, 217.) The Civil Aeronautics Board is not expert on the allowable breadth of *subpoenas duces tecum*.

The court of appeals, in the light of the showing by respondents that the demand was unreasonable and

¹⁰See, also, *McComb v. Hunsaker Trucking Contractor, Inc.*, 171 F. 2d 523, 525 (C. A. 5); *Goodyear Tire & Rubber Co. v. National Labor Relations Board*, 122 F. 2d 450, 453-454 (C. A. 6); *National Labor Relations Board v. Pesante*, 119 Fed. Supp. 444, 458-459 (DC-SD Calif.); the same result has been reached in cases involving grand jury subpoenas. *In re United Shoe Machinery Corporation*, 6 F. R. D. 347, 349 (DC-D. Mass.); *In re United Last Company*, 7 F. R. D. 759 (DC-Mass.).

A Hoover Commission task force took the position that unlimited application of the analogy between administrative and grand jury subpoenas "would be extremely unwise." Commission on Organization of the Executive Branch of the Government, Task Force Report on Legal Services and Procedures, March, 1955, page 175. (U. S. Government Printing Office.)

oppressive, required the district court on remand to pass upon the judicial question of reasonableness or oppressiveness of the demand. The court of appeals held that the district court had failed to pass upon this issue.

3. The Board is given extremely broad powers of inspection of all documents kept by air carriers and their affiliates in Section 407(e) of the Act. An inspection of the facilities of some of the administrative respondents was conducted by the Board under the supervision of the district court which the court of appeals found to be extremely fair and "if it had been pursued for a sufficient length of time, would have permitted the Board to issue subpoenas for the exact documents which they wished" [R. 172-173]. The court of appeals suggested that it might be appropriate to continue the inspection and limit the subpoenas to the documents required [R. 170-171]. This was entirely proper in view of the broad sweep of the subpoenas.

The court of appeals did not hold, as suggested by the Board (Pet. Br. p. 31) that the Board is required to exercise its inspection powers in all cases before its subpoenas may be enforced. The court of appeals merely required the district court on remand to determine whether the demand is oppressive and whether the documents are relevant and material.¹¹ [R. 173.] Where the demand is sweeping, as here (comprehensive of all records for a thirty-eight month period), it cannot be supposed that the courts are required to close their eyes to this obvious means

¹¹We do not understand the court of appeal's decision to require additional inspection by the Board unless the district court is otherwise unable to determine relevancy and materiality and reasonableness of the demand, on remand.

of resolving the conflict between the Board's evidentiary needs and the right of the administrative respondents to be free from oppressive administrative action and unreasonable searches and seizures.¹² This court has had occasion to limit the subpoena power, because it "is a power capable of oppressive use, especially when it may be indiscriminately delegated and the subpoena is not returnable before a judicial officer." (*Cudahy Packing Co., Ltd. v. Holland*, 315 U. S. 357, 363; *United States v. Minker*, 350 U. S. 179, 187.)

The Board insists that its subpoena and inspection powers are independent of each other (Pet. Br. pp. 31-32). Whether or not this is true, "the terms [inspection requirement and subpoena] are so nearly synonymous that this court did not distinguish between them." (*Porter v. Gantner & Mattern Co.*, 156 F. 2d 886, 890 (C. A. 9).)¹³

Inspection of the records of the administrative respondents at their respective premises serves a useful purpose in that the administrative respondents will be able to conduct their respective businesses and have access to

¹²See *Federal Trade Commission v. Mensies*, 145 Fed. Supp. 164, 170-171 (D.C.-D. Maryland).

¹³The Board relies upon this case to show that the subpoena and inspection powers are independent of each other (Pet. Br. pp. 31-32.) The court also stated, at 156 F. 2d 890: "Both are formal documents having the same end in view and are subject to similar limitations. A subpoena is somewhat broader and may require production of records at a place other than that in which they are ordinarily kept. But in some instances even this distinction may be lacking." See, also, *Westside Ford, Inc. v. United States*, 206 F. 2d 627, 634-635 (C. A. 9), where the court ordered an inspection at respondent's premises although the administrative agency sought enforcement of a subpoena.

their records¹⁴ "without the necessity of bringing truck-loads of records to the hearing officer" [R. 170]. There is no basis for the Board's unsupported supposition that the respondents will not permit inspection of their records (Pet. Br. p. 32) since respondents permitted unrestricted access to their records during the inspection under the direction of the district court [R. 129-142] which if, "continued to its logical end, the Board could have limited the subpoenas to documents which everyone would have recognized were relevant and material" [R. 173].¹⁵

4. The respondents have demonstrated that many of the subpoenaed documents are in the possession of the Board, including all balance sheets and profit and loss statements of Great Lakes and Currey [R. 111, 134, 139], all advertising materials of Great Lakes¹⁶ [R. 41, 112, 133-134] and all pertinent data contained in aircraft maintenance logs.¹⁷ It is self-evident that documents in the possession of the Board need not be produced. (*Application of Linen Supply Companies*, 15 F. R. D. 115, 119 (D. C. S. D., N. Y.).) In the light of the uncontradicted proof that the Board had many of the subpoenaed docu-

¹⁴Respondents claim that the documents subpoenaed are necessary to the conduct of their businesses, which claim is not challenged by the Board [R. 114-115].

¹⁵While the Board contends that the district court properly enforced the subpoenas (Pet. Br. pp. 32-42), it pointedly takes no position on the propriety of the inspection order of the district court.

¹⁶Except one minor item for which the company paid the sum of \$7.00 [R. 133].

¹⁷Matter contained in aircraft logs which is not filed with the Board relates entirely to air safety matters not at issue in this proceeding [R. 113-114].

ments in its possession, the court of appeals properly concluded that the subpoenas should not be enforced as presented.

B. The District Court Should Determine Whether the Subpoenaed Documents Are Relevant and Material.

1. The Board is required to show materiality and relevancy of the documents subpoenaed in order to obtain judicial enforcement of administrative *subpoenas duces tecum* calling for a vast number of documents designated only by general classes. (*Hale v. Henkel*, 201 U. S. 43, 77; *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 307; *Goodyear Tire & Rubber Co. v. National Labor Relations Board*, 122 F. 2d 450, 453 (C. A. 6).)¹⁸

The Board has failed to introduce evidence of relevancy or materiality of the subpoenaed documents; instead, it relies entirely upon the charges outlined in the administrative complaint [R. 14-39].¹⁹ The district court stated that it could not say that any of the subpoenaed documents were "immaterial or irrelevant to the proceeding before the Board" and enforced the subpoenas [R. 143-146]. The court of appeals remanded the case to the district court with instructions to determine whether the documents are material and relevant [R. 173].

This court has held that where the demand for documents is broad, the Board must produce "some evidence

¹⁸See, also, *Boren v. Tucker*, 239 F. 2d 767, 773 (C. A. 9); *McComb v. Hunsaker Trucking Contractor, Inc.*, 171 F. 2d 523, 525 (C. A. 5); *Bowles v. Cherokee Textile Mills*, 61 Fed. Supp. 584, 585-586 (D.C.-E.D. Tenn.); Cf. *Brown v. United States*, 276 U. S. 134, 142-143.

¹⁹The Board insists that it need only show "general" relevance (Pet. Br. pp. 10, 16, 17).

of their materiality . . . to justify an order for the production of such a mass of papers." (*Hale v. Henkel*, 201 U. S. 43, 77.) Similarly, "some evidence of the materiality of the papers demanded must be produced." (*Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 306.) The respondents have shown that many of the documents subpoenaed are not relevant and while their judgment regarding relevancy and materiality "was not final, at least some *evidence* must be offered to show that it was wrong" (emphasis supplied). (*Federal Trade Commission v. American Tobacco Co.*, *supra*, p. 307.) Before the court will order an administrative subpoena enforced "it must appear from evidence that the papers, documents or evidence sought are material to a determination of the matter under investigation." (*Bowles v. Cherokee Textile Mills*, 61 Fed. Supp. 584, 586 (D. C. E. D., Tenn.).)

The court of appeals has discretion to require a showing of materiality and relevancy from the Board before an order of enforcement issues in view of the sweeping demand and the Board's failure to introduce evidence of materiality or relevancy or to exercise its statutory power of inspection provided in Section 407(e) of the Act.²⁰ The court is required to balance the legitimate evidentiary needs of the Board and the unquestioned right of the respondents to be free from unreasonable searches and seizures and arbitrary administrative action. (*Hale v. Henkel*, 201 U. S. 43, 76-77; *McComb v. Hunsaker Trucking Contractor*, 171 F. 2d 523, 525 (C. A. 5).) The

²⁰The Board failed to produce any evidence of materiality or relevancy after examining many of the subpoenaed documents during the course of the inspection under the direction of the district court [R. 169].

court of appeals determined that this balance could best be achieved by requiring the district court to determine whether the documents subpoenaed are relevant and material. In subpoena enforcement cases, "courts act as courts and not as administrative adjuncts" and they discharge "judicial power with all the implications of the judicial function in our constitutional scheme." Justice Frankfurter dissenting in *Penfield Co. of California v. Securities and Exchange Commission*, 330 U. S. 585, 604.²¹ We submit that the court of appeals properly "was exercising judicial power" while the district court served as an "administrative adjunct."

—2. The statement of the district court that it was unable to say the subpoenaed documents are "immaterial or irrelevant" without an examination of the documents [R. 143] is not tantamount to a finding that the documents are relevant and material. The district court placed the burden of proof upon the respondents. This distinction, we submit, is a matter of substance, not semantics.

The district court had before it no evidence tending to establish materiality and relevance. Although the court was able to see some connection, no matter how tenuous, between the charges and some of the subpoenaed documents, it was unable to make a finding that the documents were relevant or material. By way of example, the district court could not find that "all . . . supporting documents to the entries in said books and ledgers" of

²¹See, also, *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 479, 485, 489; *General Tobacco & Grocery Co. v. Fleming*, 125 F. 2d 596, 599 (C. A. 6).

all the respondent companies, including "all vouchers, invoices [and] journals" [R. 40, 44, 48], were relevant or material since many of these documents quite obviously pertain to business matters conducted by the administrative respondents with third parties bearing no conceivable relationship to the charges before the Board. Rather than determine the point, the district court passed it over with the remark that it could not say that the documents were irrelevant or immaterial. In this regard, we submit, the district court rubber-stamped the actions of the Board and "failed to pass upon the judicial question presented to him in the case" [R. 171]. The Board is entitled only to "documentary evidence—not to all documents, but to such documents as are evidence." (*Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 306.)

3. The Board must establish the proposition that the court of appeals does not have discretion to require a showing of relevancy and materiality from the Board to overturn the decision in this case.²² This burden is increased materially by the showing made by respondents with regard to the vast number of documents sought, the burden placed upon respondents in delivering up the documents, the need for the documents to conduct day-to-day business affairs, the failure of the Board to exercise its

²²It should be noted that the court of appeals stated that the showing of materiality and relevancy as to the records of entities and individuals directly under control of the Board "might not necessarily be as comprehensive as that required in other cases" since the Board "should have considerable leeway in order not to hamper its functions" [R. 172].

statutory inspection power and the fact that the Board had many of the subpoenaed documents in its possession.²³ The Board also failed to introduce any evidence tending to establish relevancy or materiality after it had examined and photographed many of the subpoenaed documents.

The Board attempts to discharge the burden of demonstrating that the court of appeals exceeded its allowable area of discretion by indicating that courts faced with differing factual situations, enforced administrative subpoenas on the showing that the documents sought were not "plainly incompetent or irrelevant to any lawful purpose,"²⁴ "probably relevant"²⁵ or "relates to or touches the

²³It should also be noted that the documents are only designated loosely by class, except for particular ticket coupons [R. 42-43, 50].

²⁴"Not plainly incompetent or irrelevant." *Endicott Johnson Corp. v. Perkins*, 317 U. S. 501, is discussed in Footnote 27, *infra*. *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389, 392 (C. A. 10). The court stated that the test of the validity of the subpoena is whether the documents called for are pertinent and relevant to the inquiry and added the important qualification that "the process is lawful if it confines its requirements within the limits which reason imposes in the circumstances of a particular case." (147 F. 2d 392.) This proceeding concerned an administrative investigation and was not a "trial or adversary" proceeding.

²⁵"Probably relevant." *Smith v. Porter*, 158 F. 2d 372, 374 (C. A. 9), certiorari denied, 331 U. S. 816. The quoted language is clearly dictum because respondent had argued that the subpoena and court order enforcing the subpoenas were void and unlawful for reasons totally unrelated to relevance and materiality of the documents demanded. "No point is made [by the respondent] as to the materiality of any particular document called for in the subpoena." (158 F. 2d 374.) In the absence of objection by the respondent, the court said that the documents were probably relevant to the inquiry, which was an investigation by the Office of Price Administration and not a "trial or adversary" proceeding.

matter under investigation."²⁶ Many of the cases cited by the Board are concerned with disputes over "coverage" of the regulatory statute. This court has held that "coverage" properly is committed to the expertise of the administrator while questions of materiality, relevancy and burden of the demand, being judicial questions, are to be determined by the court in administrative subpoena cases.²⁷

²⁶"Relates to or touches upon the matter under investigation." *Cudahy Packing Co. v. National Labor Relations Board*, 117 F. 2d 692, 694 (C. A. 10), concerned a subpoena, calling for a limited group of documents issued by the National Labor Relations Board to obtain information pertinent to an election to select the bargaining representative of respondents' employees and was not a "trial or adversary" proceeding. Respondent's principal objection to the subpoena was that the Board's order directing the election was void because of arbitrary and capricious acts committed and delays caused by the Board. The quoted language is dictum and merely paraphrases the statute giving the district court jurisdiction to enforce the administrative subpoena. The court stated (117 F. 2d 693), that the respondent "does not . . . contend that the evidence sought by the Board does not relate to the subject under investigation."

²⁷*Endicott Johnson v. Perkins*, 317 U. S. 501; *Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186. The documents subpoenaed in the *Endicott Johnson* case were conceded to be relevant insofar as certain plants were concerned; the respondent objected to producing the same payroll records for plants which it contended were outside the Secretary's jurisdiction. In the *Oklahoma Press* case, the court made a specific finding that "all the records sought were relevant to the inquiry," 327 U. S. 186, 210. In this case, the administrator conceded that questions of relevancy and breadth of the demand were for the court to determine and the court stated that these issues were "neither minor nor ministerial matters." 327 U. S. 186, 217. Note 57. The subpoena in the *Oklahoma Press* case (Pet. Br. p. 20) was limited strictly to documents bearing directly on the issues of coverage and, in connection with violations of the Act, to wages and hours of employment. Both the *Endicott Johnson* case and the *Oklahoma Press* case involved "exploratory administrative investigations rather than "trial or adversary" proceedings.

4. Docket No. 6908 is an adversary administrative proceeding or formal complaint case where the Board seeks an order, revoking the licenses of the two air carrier respondents to engage in air transportation and an order requiring the other administrative respondents to cease and desist from engaging in air transportation directly or indirectly. In short, the Board seeks to put all of the administrative respondents out of business. Virtually every case concerning administrative subpoenas relied upon by the Board, involved an exploratory administrative investigation.²⁸ There is a real distinction between the allowable breadth of *subpoena duces tecum* issued in an exploratory administrative investigation, on the one hand, and administrative *subpoena duces tecum* issued in the course of a trial or adversary proceeding on the other hand. "The standards of materiality or relevancy are far less rigid in an *ex parte* inquiry to determine the existence of violations of a statute, than those applied in a trial or adversary proceeding." (*Hagen v. Porter*, 156 F. 2d 362, 365 (C. A. 9), certiorari denied 329 U. S. 729; *Westside Ford, Inc. v. United States*, 206 F. 2d 627, 632 (C. A. 9); Cf. *United States v. Morton Salt Co.*, 338 U. S. 632, 641-643.) This distinction was relied upon by the court of appeals in the instant case in concluding that the Board had failed to demonstrate materiality and relevancy [R. 172]. The effect of this distinction is to require a more precise showing of materiality and relevancy in an adversary administrative proceeding than in an exploratory

²⁸See Footnotes 24 through 27, *supra*; cf. *United States v. Morton Salt Co.*, 338 U. S. 632, 641-643.

administrative investigation.²⁹ In the former case the administrative body seeks to prove defined charges, while in the latter case it is merely gathering information.

5. The Board interprets the decision of the court of appeals to mean that each individual document subpoenaed must be identified and demonstrated to be material and relevant before the district court may enforce the subpoenas (Pet. Br. p. 27). We do not believe that the court of appeals established such a test; the district court may order enforcement so long as it is satisfied that "each (document) is material and relevant" [R. 173]. This test may be satisfied by a showing that defined groups of documents are relevant and material particularly such groups as are identified by subject matter rather than by general classification, as these subpoenas are not written. (*Hale v. Henkel*, 201 U. S. 43, 76-77; cf. *Brown v. United States*, 276 U. S. 134, 142-143; *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389, 392 (C. A. 10).) The subpoenas in their present form do not call for "evidence" as the term was used by Mr. Justice Holmes in *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 306, where this court stated:

The right of access given by the statute is to documentary evidence—not to all documents, but to such documents as are evidence. The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it.

²⁹We cannot agree with the Board's contention that this distinction arises because the issues in an investigation often are broader than those in a formal complaint case (Pet. Br. pp. 36-38).

The statute under consideration in the *American Tobacco* case authorizing issuance and enforcement of administrative subpoenas is virtually identical to the statute with which we are concerned.³⁰ The fact that some of the subpoenaed documents appeared to be relevant and material did not deter this court in the *American Tobacco* case from refusing to enforce of the administrative subpoenas. We acknowledge the relevancy and materiality of some of the subpoenaed documents. Our objections go, primarily, to the many documents which are irrelevant and immaterial and to the oppressive demand of the subpoenas. Similarly, it was held where a subpoena calls for all of the cards in an employee card index, the fact that some of the cards clearly were relevant and some of the other cards might be relevant to the issues in the administrative proceeding, "does not warrant a demand for the whole." While respondent's "conclusion that this index is not relevant is not final, at least some evidence must be offered to show that it is wrong." (*Goodyear Tire & Rubber Co. v. National Labor Relations Board*, 122 F. 2d 450, 453 (C. A. 6).)

The Board also insists that it is not required to demonstrate materiality or relevancy of the subpoenaed documents until they are offered in evidence (Pet. Br. pp. 23-24, 28). The answer to this contention is that administrative respondents would never have their day in court to assert that the demand is oppressive or unreason-

³⁰"the Commission shall, at all reasonable times, have access to, for the purposes of examination, and the right to copy, any documentary evidence of any corporation being investigated or proceeded against, and shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation." (264 U. S. 304.)

able, since lack of materiality or relevancy and oppressiveness of the demand are clearly interrelated and the documents, according to the Board, must first be delivered to the hearing officer before these issues may be raised. We have demonstrated that oppressiveness or unreasonableness of the demand is a proper defense in a subpoena enforcement case (*supra*, pp. 14-15).

C. The Right of Privacy of Individuals Will Be Invaded Unnecessarily if the Subpoenas Are Enforced.

Certain of the subpoenas call for the personal income tax returns of three individuals for three years [R. 40, 45, 48]. Two of these individuals (Ida Mae and Irving E. Hermann) are respondents in the administrative proceeding and the third individual (Robert M. Smith), while not a respondent, is alleged to be a minority stockholder and officer of Currey Air Transport, an administrative respondent allegedly controlled by the Hermanns [R. 22-25].³¹ The district court enforced the subpoenas, including the personal income tax returns, because it could not "say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant" [R. 143]. The court of appeals required the district court on remand to determine "whether the privacy of individuals has been invaded" by requiring production of these personal income tax returns over objection that the returns relate entirely to personal affairs [R. 173]. The court of appeals stated that on taking testimony, this objection may prove "deceptive and illusory" but that "the privacy of individuals as against

³¹The administrative complaint also alleges that Robert M. Smith was formerly employed by the administrative respondent, Great Lakes Airlines [R. 23].

require defendants to submit their income tax returns for copying." (*Garrett v. Faust*, 8 F.R.D. 556, 557 (D.C.-E.D., Pa.).)

The Board's sweeping demand, the availability of other documents to the Board through use of its statutory inspection powers, the failure of the Board to show materiality or relevancy, and the availability of the same information by the production of other documents or "direct from the witnesses for the asking," make it clear that the court of appeals did not exceed its allowable discretion in requiring the district court to rule whether or not production of personal income tax returns unnecessarily violated the right of privacy of individuals.

Conclusion.

Upon the basis of the foregoing reasons and authorities, the judgment of the court of appeals should be affirmed.

ROLAND E. GINSBURG,

Attorney for Respondents.

KEATINGE & OLDER,
Attorneys at Law,
Of Counsel.

APPENDIX.

Summary of Subpoenas.

Great Lakes Airlines, Currey Air Transport, Air International Inc., Great Lakes Airlines Agency, Inc., and Nevada Aero Trades, Company are called upon to produce the following documents for a 38-month period, January 1, 1952 through February 25, 1952:

1. *All* general ledgers and *all* subsidiary books and ledgers, and *all* vouchers, invoices, journals and other supporting documents to the entries in said books and ledgers.
2. *All* audit report, financial statements (balance sheets, schedules of cash receipts and disbursements, and profit and loss statement).
3. *All* minutes and notes of directors' and stockholders' meetings, stock record books and *all* stock certificates.
4. *All* bank statements and cancelled checks.
5. *All* income tax returns for the years 1951 through 1954, inclusive.
6. *All* correspondence, contracts, agreements and options between any of the nineteen (19) Respon-

*The Great Lakes documents were called for in the subpoenas served upon Respondents Ida Mae Hermann [R. 39-43], H. C. Richards [R. 54-55], George Patterson [R. 55-56] and Capt. G. D. Thompson. [R. 60.] The Currey documents were called for in the subpoenas served upon Respondents Robert M. Smith [R. 47-50]. The documents of Air International, Inc. and Nevada Aero Trades Company were also called for in the subpoena served upon Respondent Ida Mae Hermann. [R. 39-43.] The Great Lakes Airlines Agency, Inc. documents were called for in the subpoena served upon Respondent Irving E. Hermann. [R. 43-47.]

dents in Docket No. 6908 and between any of them and Robert M. Smith and Arthur R. Currey.^b

7. All individual, personnel and payroll records and vouchers.

Great Lakes and Currey, the Air Carrier Respondents in Docket No. 6908, are called upon to produce the following additional documents for the same 38-month period, January 1, 1952 through February 25, 1955:^c

8. Specimens of all handcards, brochures, schedules and other advertising material distributed to the public by Great Lakes, Currey and/or their ticket agents.

9. Specimens of each type of ticket and exchange order sold to the public during the years 1952 through 1954, inclusive, by Great Lakes, Currey and/or their ticket agents.

10. All flight, auditor and agent coupons taken from documents actually sold to the public by Great Lakes, Currey, and/or their ticket agents during the months of June and November for the years 1952 through 1954, inclusive.

11. Specimen copies of all advertisements subscribed for by, or on behalf of Great Lakes and Currey.

12. All flight personnel assignment sheets, aircraft scheduling sheets, operations manuals, operations specification sheets for aircraft identification (Form ACA-518A), and pilot rosters.

^bAll correspondence between Ida Mae Hermann and Irving E. Hermann, husband and wife, is included.

^cExcept as hereinafter noted in items 9, 10, 14, 15, 16 and 17.

13. *All* contracts, agreements and memoranda related to lease of office, ticket counter and maintenance space and facilities.

14. Specific flight, auditor and agent ticket coupons used in connection with various flights in 1953 and 1954.

15. *All* flight personnel assignment sheets or charts and minutes of *all* pilot meetings since May 1, 1952.

16. For the period May 7, 1952, through March 9, 1955, the following:

- a. *All* aircraft maintenance logs for aircraft owned or operated by Currey and Great Lakes;
- b. *All* aircraft identification sheets (Form ACA-518A) prepared by or for Currey and Great Lakes;
- c. *All* aircraft utilization sheets prepared by and/or for Currey and Great Lakes;
- d. *All* aircraft lease agreements and correspondence and memoranda relating thereto for aircraft operated by Currey and Great Lakes.

17. *All* aircraft routing sheets, aircraft assignment sheets and ship distribution charts prepared and/or used by Great Lakes and Currey since May 1, 1952.

18. Great Lakes is also directed to produce *all* Bills of Sale, Chattel Mortgages, Certificates of Registration, and Liens reflecting chain of title of aircraft owned and/or operated by Great Lakes and Nevada Aero Trades Company for the same 38-month period.

19. Respondent M. B. Scott is directed to produce *all* correspondence (letters, telegrams, notes and memoranda) between M. B. Scott, Inc. and eighteen

(18) of the Respondents in Docket No. 6908, and *all* correspondence, invoices, statements and insertion orders in which the said eighteen (18) Respondents are mentioned and *all* ledger sheets in the possession of M. B. Scott, which contain information regarding transactions with any of the said eighteen (18) Respondents; and copies of *all* insertion orders for radio or television advertising and orders for the printing of brochures and other advertising materials placed with M. B. Scott, Inc. by any of the said eighteen (18) Respondents. There is no time limitation or restriction whatsoever pertaining to the M. B. Scott subpoena. [R. 51-53.]

20. Respondent Orville Kelman is directed to produce *all* correspondence, contracts, agreements, memoranda, work papers and audit reports relating to the nineteen (19) Respondents in Docket No. 6908, since May 1, 1952. [R. 58-59.]

21. Respondent Harold Shein is directed to produce the following records and documents of administrative Respondent Skycoach Agency of San Francisco, Inc., and any other entities using the style "Skycoach," for the period January 1, 1952, through February 21, 1955, inclusive: Copies of *all* quarterly recapitulations of payrolls and payroll tax sheets, together with any notes or memoranda indicating to whom such copies were provided and *all* copies of weekly recapitulations of receipts or disbursement sheets with notes or memoranda indicating to whom such copies were provided. [R. 53-54.]

22. Respondents Ida Mae Hermann, Irving E. Hermann and Robert M. Smith also are directed to produce their respective personal income tax returns for the calendar or fiscal years 1951 through 1954. [R. 40, 45, 48.]

Service of the within and receipt of a copy
thereof is hereby admitted this.....day of
April, A. D. 1957.

LIBRARY - Supreme Court, U.S.

FILED D

MAY 31 1957

JOHN T. PEY, Clerk

LIBRARY
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 540.

CIVIL AERONAUTICS BOARD, Petitioner,

vs.

IDA MAE HERMANN, et al., Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.

PETITION FOR REHEARING.

ROLAND E. GINEBUP,
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On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.

PETITION FOR REHEARING.

*To the United States Supreme Court and the Justices
Thereof:*

The Respondents in the above-entitled cause present this petition for a rehearing of the above-entitled cause, and, in support thereof, respectfully show:

I.

This Court in its opinion of May 6, 1957, reversed the judgment of the Court of Appeals for the Ninth Circuit remanding this cause to the United States District Court for further proceedings. This cause was remanded to the District Court with instructions to reinstate its enforcement order of May 6, 1955.

II.

It is respectfully submitted that this Court has failed to consider the following pertinent matters, which assume particular significance in view of the hundreds of thousands of documents subpoenaed by the Board and the wholly unreasonable burden of production thereby placed upon the Respondents:

- (a) The subpoenas were issued in an adversary enforcement proceeding where the standards of materiality and relevance are far more stringent than in an administrative investigatory proceeding. (*Westside Ford, Inc. v. United States*, 206 F. 2d 627, 632 (C. A. 9); *Hagen v. Porter*, 156 F. 2d 362, 365 (C. A. 9), cert. den. 329 U. S. 729.)
- (b) The subpoenas described the documents sought only by general classes or categories; there is no specification of subject matter contained in the subpoenas. (*Hale v. Henkel*, 201 U. S. 43, 76-77; cf. *Brown v. United States*, 276 U. S. 134, 142-143.)
- (c) Several of the Respondents have properly raised and preserved the defense of unreasonable invasion of privacy by reason of the required production of personal income tax returns. The Court of Appeals ruled that the District Court must pass upon the issue raised. This Court did not pass upon this issue.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted

and that the judgment of the Court of Appeals for the Ninth Circuit be, upon further consideration, affirmed.

Dated, May 29, 1957.

Respectfully submitted,

ROLAND E. GINSBURG,

Counsel for Respondents.

KEATINGE & OLDER,

Of Counsel.

Certificate of Counsel.

I, counsel for the above-named Respondents, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

ROLAND E. GINSBURG,

Counsel for Respondents.